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BOSTON ZONING CODE

As Amended Through

December 31, 1997

Volume II

Downtown Districts
Central Artery Special District
Harborpark District



Thomas M. Menino
Mayor

Published for Boston Zoning Commission by
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**BOSTON ZONING CODE
and Enabling Act**

As Amended Through December 31, 1997

This edition of the Boston Zoning Code and Enabling Act incorporates all text amendments to the Boston Zoning Code adopted through December 31, 1997. It also includes the Boston zoning enabling act, Chapter 665 of the Acts of 1956, as amended (the "Enabling Act"). Boston zoning maps, and the amendments thereto, are available separately.

This edition consists of three volumes:

- Volume I - Enabling Act
 General Code (*Articles 1 - 34, 36, 80, 85 and 86*)**
- Volume II - Downtown Districts
 Central Artery Special District
 Harborpark District**
- Volume III - Neighborhood Districts**

Copies of the Boston Zoning Code, Enabling Act, and zoning maps may be purchased at the offices of the Boston Redevelopment Authority, on the 9th floor of Boston City Hall.

Information on zoning text and map amendments, and copies of amendments adopted subsequent to this printing, may be obtained from the Secretary to the Zoning Commission, at the offices of the Boston Redevelopment Authority. Inquiries may be made in person or by mail or telephone to:

Secretary to the Zoning Commission
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Boston, MA 02201
(617) 722-4300

BOSTON ZONING CODE
As Amended Through December 31, 1997

Volume II

DOWNTOWN DISTRICTS
CENTRAL ARTERY SPECIAL DISTRICT
HARBORPARK DISTRICT

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 38-1. Statement of Purpose, Goals, and Objectives. The purpose of this article is to establish the zoning regulations for the comprehensive plan for the Midtown Cultural District as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this code. The goals and objectives of this article and the Midtown Cultural District Plan are to direct downtown development in a way that promotes balanced growth for Boston; to prevent overdevelopment of the Financial District and the Back Bay by promoting mixed-use development in Midtown; to revitalize Midtown as the region's center for performing and visual arts by rehabilitating historic theaters and creating new cultural facilities for the city's nonprofit arts community; to protect the quality of life and provide for expansion of the thriving Chinatown neighborhood by creating affordable housing and business opportunities, and by controlling institutional expansion in the area; to preserve Boston's historic resources and public open spaces, which provide enjoyment to all residents and visitors and which increase land values in their proximity, by virtue of historic, aesthetic, and environmentally beneficial qualities; to provide new and expanded facilities for community services; and to create a new residential neighborhood downtown by encouraging the development of housing which is affordable to all segments of the community.

SECTION 38-2. Recognition of the Midtown Cultural District Plan. In accordance with Section 27D-18 of this code, which requires production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the Midtown Cultural District (Special Study Area No. 2), the commission hereby recognizes the Midtown Cultural District Plan (adopted by the Boston Redevelopment Authority on January 12, 1989, and as amended from time to time) as the general plan for the Midtown Cultural District. The Midtown Cultural District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Midtown Cultural District. The district includes several distinct areas, such as but not limited to Downtown Crossing and Park Square. This article is one of the means of implementing the Midtown Cultural District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Chapter 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

↑**SECTION 38-3. Physical Boundaries.** The provisions of this article are applicable only in the Midtown Cultural District, which includes portions of Downtown Crossing south of School Street, the Essex Street Corridor and Chinatown, the historic Cultural District, and Park Square. The boundaries of the Midtown Cultural District are as shown on a map entitled, "Map 1A Midtown Cultural District (supplemental to 'Map 1 Boston Proper')" of the series of maps entitled "Zoning Districts - City of Boston," as amended.

(↑As amended on March 15, 1993)

SECTION 38-4. Applicability. This article together with the rest of this code constitutes the zoning regulation for the Midtown Cultural District and applies as specified in Section 4-1 regarding the conformity of buildings and land to this code. Application of the provisions of Article 27D to the Midtown Cultural District is rescinded, and the Midtown Cultural District is deleted from the Downtown Interim Planning Overlay District on the effective date of this article. Where conflicts between this article and the rest of this code exist, the provisions of this article shall govern. Except where specifically indicated in this article, the provisions of this article supersede Sections 13-1, 13-2, and 13-4, and Articles 8 and 14 through 24, of this code for the Midtown Cultural District. The provisions of this article, however, are not applicable to the following Proposed Projects, which are governed by the rest of this code.

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the commission for adoption of this article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the commission for adoption of this article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

↓**SECTION 38-5. Establishment of Protection Areas.** This section establishes "protection areas" within the Midtown Cultural District. The protection areas are established in order to protect public open spaces or residential neighborhoods abutting the protection areas, or the concentration of historic buildings within the protection areas. The protection areas are shown on Map 1A of this code. Any other provision of this article or this code notwithstanding, Proposed Projects within a protection area are limited to the building height or floor area ratio (FAR) specified for such protection area as follows. The setback provisions set forth in Section 38-19 apply to Proposed Projects within protection areas. The following protection areas are established:

1. Boston Common and Public Garden Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Boston Common and Public Garden Protection Area," any portion of a Proposed Project within 100 feet of the nearest street line of any street described below are limited to the building height specified for such street as follows:
 - (a) Tremont Street from Bromfield Street to West Street: 125 feet maximum height.

- (b) Tremont Street from West Street to Boylston Street: 155 feet maximum height.
- (c) Boylston Street from Tamworth Street to Park Square: 130 feet maximum height.
- (d) Boylston Street from Park Square to the westerly sideline of Hadassah Way, to a depth of 75 feet from Boylston Street: 130 feet maximum height; beyond said depth of 75 feet: 155 feet maximum height.
- (e) South side of Boylston Street from the westerly sideline of Hadassah Way to Arlington Street to a depth of 50 feet from Boylston Street: 85 feet maximum height; beyond said depth of 50 feet: 130 feet maximum height. See also Section 16-6(f).

Any portion of a Proposed Project within the Boston Common and Public Garden Protection Area is limited to FARs of eight (8); provided that such a Proposed Project shall have an as-of-right FAR of ten (10), if such Proposed Project is subject to or shall elect to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

- 2. Bay Village Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Bay Village Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
- 3. Newspaper Row/Old South Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Newspaper Row/Old South Protection Area," a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) are allowed.
- 4. Ladder Blocks and Washington Street Theater Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Ladder Blocks and Washington Street Theater Protection Area," a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) are allowed.
- 5. Tremont Street Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Tremont Street Protection Area," a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) are allowed.

6. Boylston Street Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Boylston Street Protection Area," a maximum building height of eighty (80) feet and a maximum FAR of seven (7) are allowed.
7. Hayden Building Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Hayden Building Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
8. Jacob Wirth Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Jacob Wirth Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
9. Stuart Street/Washington Street Protection Area. Within that portion of the Midtown Cultural District depicted on Map 1A of this code as the "Stuart Street/Washington Street Protection Area," a maximum building height of one hundred (100) feet and a maximum FAR of eight (8) are allowed.

(↑As amended on March 15, 1993 and May 9, 1996.)

SECTION 38-6. Rooftop Additions within Protection Areas. Rooftop additions within any protection area are governed by the provisions of paragraphs 1 and 2 of this section.

1. As-of-Right Rooftop Additions. A rooftop addition within any protection area is allowed as of right only if such a rooftop addition is below sixty-five (65) feet in height measured from grade.
2. Rooftop Additions Permitted as Conditional Uses. No roofed structure designed or used for human occupancy, access, or storage shall be erected or enlarged on the roof of an existing building if such construction is not allowed as of right pursuant to paragraph 1 of this section, unless after public notice and hearing and subject to Sections 6-2, 6-3, and 6-4 the Board of Appeal grants permission therefor. In reaching its decision, said Board shall consider whether such roof structure is architecturally consistent with the distinctive historical and architectural character of the protection area. The Inspectional Services Department shall transmit a copy of the appeal for the conditional use to the Boston Landmarks Commission. The Boston Landmarks Commission may, within thirty days after the date of such transmittal, file with the Board of Appeal a recommendation, provided that if no such recommendation is received within said thirty days, the Board of Appeal may render its decision without such recommendation.

↑SECTION 38-7. **As-of-Right Building Height and Floor Area Ratio.** Except as provided in Section 38-5 pertaining to protection areas, a Proposed Project within the Midtown Cultural District is allowed an as-of-right building height of one hundred twenty-five (125) feet and an as-of-right FAR of eight (8); provided that any Proposed Project shall have an as-of-right building height of one hundred fifty-five (155) feet and an as-of-right FAR of ten (10) if such Proposed Project is subject to or shall elect to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6. The setback provisions set forth in Section 38-19 apply to Proposed Projects for as-of-right building height and FAR.

1. Exceptions in Certain Housing Priority Areas. Notwithstanding the foregoing provision, the building height and FAR permitted by exception, as provided in Article 6A, within a Housing Priority Area which is not also within a protection area established pursuant to Section 38-5 are two hundred fifty (250) feet and twelve (12), respectively, subject to the provisions of Section 38-18.2.
2. Building Height and FAR in Substantial Accord with As-of-Right Building Height and FAR. The Board of Appeal may, by exception to this code as provided in Article 6A and this paragraph, grant exceptions for FAR and, in a Planned Development Area or in the area north of Bromfield Street, for building height, in excess of the as-of-right building height and FAR established in this Section 38-7. The Board of Appeal shall grant such an exception for building height or FAR under this paragraph only if it finds that: (a) such an exception (i) is related to variations in the ground level of the lot; (ii) is in furtherance of the creation or protection of significant historical or architectural features, including but not limited to decorative cornices, ornamental features, and the like; or (iii) is related to unique characteristics of the lot or buildings on the lot, and not the Midtown Cultural District as a whole; (b) the proposed height and FAR are in Substantial Accord with the as-of-right building height and FAR for the Proposed Project established in this Section 38-7; (c) the Proposed Project and its height and massing are compatible with the surrounding area, in accordance with the Urban Design Component of Large Project Review; (d) such an exception is consistent with the Midtown Cultural District Plan and the general plan for the city as a whole; (e) such an exception is in harmony with the general purpose and intent of this code; and (f) if such exception relates to a Development Impact Project, as defined in Section 80B-7 (Development Impact Project Exactions), the applicant shall have complied with the requirements set forth in said Section 80B-7.

(↑As amended on August 17, 1989, June 14, 1990, and May 9, 1996.)

↑SECTION 38-8. **Increased FAR for Certain Ground Level Space, Neighborhood Businesses, On-Site Day Care Facilities, Community Service Organizations, Community Health Centers or Clinics, Substantially Rehabilitated Theaters, Temporary Housing Shelters, and Nonprofit Cultural Uses.** Under the provisions of Article 6A and this section, the Board of Appeal may grant an exception to the maximum as-of-right FAR in the following manner. The Board of Appeal shall grant such an exception for increased FAR only if it finds that: (a) the Proposed Project and its massing are architecturally compatible with the surrounding area, in accordance with the Urban Design Component of Large Project Review; (b) such an exception is in harmony with the general purpose and intent of this code; (c) the Proposed Project is consistent with the Midtown Cultural District Plan and the general plan for the city as a whole; and (d) if such exception relates to a Development Impact Project as defined in Section 80B-7 (Development Impact Project Exactions), the Applicant shall have complied with the requirements set forth in said Section 80B-7. The increased FAR which may be granted for the uses described in clauses (a), (b), and (c) of paragraph 1, below, of this section is up to one (1) ratio point. An increased FAR of up to one (1) ratio point may be granted for the use described in clause (d) of paragraph 1, below, of this section, in addition to the increased FAR granted for the uses described in clauses (a), (b), and (c) of paragraph 1, below, of this section. The procedure for granting such exceptions shall be in accordance with the provisions of Section 6A-2, governing the granting of exceptions; provided that, a four-fifths majority of the Boston Redevelopment Authority shall have recommended approval of the exception for increased FAR prior to the Board of Appeal's consideration of the appeal. The setback provisions set forth in Section 38-19 apply to Proposed Projects for increased FAR.

1. Uses Qualifying a Proposed Project for Increased FAR. The Board of Appeal may grant an exception for increased FAR for: (a) the amount of floor area with street frontage devoted to retail Ground Level Uses and located on the ground level or entered from a sidewalk by stairs traversing less than one full level, except for lobbies and any single use occupying more than 10,000 square feet of floor area on the ground level or entered from a sidewalk by stairs traversing less than one full level; (b) the amount of floor area agreed to be leased for a minimum of three (3) years pursuant to the Neighborhood Business Opportunities Plan adopted pursuant to Section 38-18.3; (c) the amount of floor area to be devoted to on-site day care facilities, community service organizations, community health centers or clinics, substantially rehabilitated Theaters, temporary housing shelters, or nonprofit Cultural Uses; and (d) garage space existing prior to the effective date of this article, at least one floor of which is accessory to the Proposed Project. The amount of increased FAR which the Board of Appeal may grant under this section may not exceed the floor area to be devoted to the uses listed in this section as qualifying a Proposed Project for an exception for increased FAR. In the case of a substantially rehabilitated theater qualifying a Proposed Project for increased FAR, the

Applicant shall also enter into an agreement for the substantial rehabilitation, as detailed in Section 38-25, where applicable. Any such substantial rehabilitation shall be performed in accordance with the provisions of paragraph 2 of this Section 38-8.

2. Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an existing Theater qualifying for approval of increased FAR consists of: (i) major interior or structural changes for the purpose of improving the Theater's design and its viability for Theater use including an equipment level commensurate with its anticipated use, as detailed in the Midtown Cultural District Plan; or (ii) historic restoration of the interior of the Theater. Major exterior renovations and improvements, such as a facade restoration, may also be included in the qualification as substantial rehabilitation. Substantial rehabilitation to the interior of a Theater may include, without limitation, such work as expanding stage or wings, reraising the orchestra, increasing rehearsal, dressing room, or lobby space, or historic restoration. It may also include conversion to Theater use of an original Theater currently in other use. Substantial rehabilitation does not mean normal Theater maintenance, painting, or improvements to mechanical systems alone.
3. Use of the Floor Area Qualifying Proposed Projects for Increased FAR. The use of the amount of floor area which qualifies a Proposed Project for an exception for increased FAR in accordance with the provisions of this Section 38-8 shall be limited to the uses qualifying the Proposed Project for such an exception, and any other use of such amount of floor area is forbidden. The non-use of floor area which qualifies a Proposed Project for increased FAR shall not affect the validity of such exception. In the case of Theaters to be rehabilitated substantially, the Applicant shall provide to the Board of Appeal evidence of a long-term commitment by the Applicant itself or a third party either: (a) to use the floor area for such uses; or (b) to lease or otherwise transfer such floor area for such use (which may include a lease or transfer to the City of Boston or its designee).

(↑As amended on May 9, 1996.)

SECTION 38-9. [Hinge Block Special Study Area.] Deleted on March 15, 1993 by Text Amendment No. 189.

Historical Note: Section 38-9 of this Article 38, as originally adopted in Text Amendment No. 117A, designated the area bounded by Boylston, Washington, Stuart, and Tremont Streets as the "Hinge Block Special Study Area" and called for the development of new zoning regulations for that area. Text Amendment No. 189 adopted such zoning regulations,

which established certain protection areas and a PDA-permitted area, all replacing the designation "Hinge Block Special Study Area."

↑SECTION 38-10. **Establishment of Areas Within Which Planned Development Areas May be Permitted.** This section establishes four areas within which Planned Development Areas (PDAs) may be permitted within the Midtown Cultural District. The purposes for establishment of the areas within which PDAs may be permitted are: to establish a more flexible zoning law and encourage large-scale private development on underutilized sites in the Midtown Cultural District while insuring quality design by providing planning and design controls; to protect and rehabilitate Boston's historic entertainment center as its cultural district, and to achieve the plan for the area as a vibrant regional arts district; to preserve and create the facilities necessary to house and showcase the resident artists and non-profit arts groups; to create new day care facilities; to protect and provide for expansion of housing and community facilities for the Chinatown community; to create public gathering places that will enliven and complement the historic buildings and streets which the Hinge Block comprises; and to preserve and protect the historic resources of Midtown.

1. Consistency with Section 3-1A; Review and Approval Requirements. In accordance with the provisions of Section 3-1A.a, the Midtown Cultural District Plan is the master plan for the areas within which PDAs may be permitted. The four areas within which PDAs may be permitted are shown on Map 1A of this code and Appendix A hereto, and are otherwise referred to herein, as "PDA-I," "PDA-II," "PDA-III," and "PDA-IV." No PDA is permitted within the Midtown Cultural District except within these areas. Any application for Development Plan approval for a Proposed Project within the Midtown Cultural District is subject to the provisions of this section and Sections 38-11 through 38-16, in addition to the provisions of Article 3-1A. See Article 80 concerning the applicability of Planned Development Area Review.

(↑As amended on March 15, 1993 and May 9, 1996.)

↑SECTION 38-11. **Planned Development Areas: Use and Dimensional Regulations.** The land use and dimensional regulations for PDAs are established by this section and in Table A to this article.

1. Use Regulations. Proposed Projects within PDAs are subject to the use regulations set forth in Section 38-18; provided that in Proposed Projects within PDA-III, not more than fifty percent (50%) of the floor area above a height of one hundred fifty-five feet may be devoted to Office Uses, as described in Section 38-18.5(c), or Institutional Uses, as described in Section 38-18.5(n). Proposed Projects within PDA-II are encouraged to provide ground level frontage for small business enterprises.

2. Dimensional Regulations. Proposed Projects within PDAs shall be in Substantial Accord with the building height and FAR standards set forth in Table A of this article and as follows: (a) within PDA-I, a maximum building height range of one hundred fifty-five (155) feet to three hundred eighty-eight (388) feet, and FARs of ten (10) to fourteen (14); (b) within PDA-II, a maximum building height range of one hundred fifty-five (155) feet to four hundred (400) feet, and FARs of ten (10) to fourteen (14), provided that, in a PDA which exceeds three (3) acres, one building, or a portion thereof, may have a building height in Substantial Accord with four hundred sixty-five (465) feet if (i) the maximum shadow standard set forth in Section 38-16.1 is met, and (ii) such building or portion thereof above a height of one hundred fifty-five (155) feet is set back from Washington Street one (1) foot for each foot of building height in excess of four hundred (400) feet in addition to the minimum setback of thirty-five (35) feet required by Section 38-19.4; (c) within PDA-III, a maximum building height range of one hundred fifty-five (155) feet to three hundred (300) feet, and FARs of 10 to 14; and (d) within PDA-IV, a maximum building height range of one hundred fifty-five (155) feet to two hundred seventy-five (275) feet, and FARs of 10 to 14.

(↑ As amended on August 17, 1989, August 12, 1991, March 15, 1993, May 9, 1996 and July 31, 1997.)

↑ **SECTION 38-12. Planned Development Areas: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

TABLE A

**Dimensional Regulations
Planned Development Areas
Midtown Cultural District**

	<u>Maximum Height Standards</u>	<u>Maximum FAR Standards</u>
PDA-I	155'-388'	10-14
PDA-II	155'-400'+	10-14
PDA-III	155'-300'	10-14*
PDA-IV	155'-275'	10'-14'

+ Provided that in a PDA which exceeds three (3) acres, one building, or a portion thereof, may have a building height in Substantial Accord with four hundred sixty-five (465) feet. See Section 38-11.2(b).

* In Proposed Projects to exceed a building height of 155', at least fifty percent (50%) of the gross floor area above the height of one hundred fifty-five feet must consist of uses other than office uses or institutional uses. See Section 38-11.1.

(↑ As amended on August 17, 1989, August 12, 1991, March 15, 1993, May 9, 1996, and July 31, 1997.)

SECTION 38-13. [Planned Development Areas; Authorization for Exceptions.] Deleted on May 9, 1996 by Text Amendment No. 228.

↑SECTION 38-14. **Planned Development Areas: Public Benefit Criteria.** The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this article if the Development Plan proposes a plan for public benefits, consistent with the Midtown Cultural District Plan, including one or more of the following: (a) the development of a theater or other cultural facility, in accordance with the provisions of paragraph 1, below, of this section; (b) the substantial rehabilitation of a Landmark, Historic Building, or an existing Theater, in accordance with the provisions of paragraph 2 of this section; (c) the provision of Affordable housing, in accordance with the provisions of paragraph 3 of this section; or (d) within PDA-IV, the provision of

open space, in accordance with the provisions of paragraph 7 of this section. The total amount of gross floor area available for provision of mitigating public benefits under this section shall not exceed the maximum floor area permissible under the provisions of Section 38-11 and Table A of this article.

1. Development Plan Approval for Development of New Theater or Other Cultural Facility. The Boston Redevelopment Authority may approve a Development Plan proposing to develop or to cause the development of a new Theater or other cultural facility if: (a) either (i) the new Theater or other cultural facility is of a useful condition, size, and type which is appropriate, under the circumstances pertaining at the time of the application for Development Plan approval, to contribute to the balance of cultural facilities responsive to the needs of the Midtown Cultural District, as identified in the Midtown Cultural District Plan; or (ii) the Development Plan details provision of sufficient assistance for successful development of a Theater or cultural facility, including ancillary or accessory facilities such as administrative offices, rehearsal/studio space, dressing room/green room space, storage space, or other assistance, as identified in the Midtown Cultural District Plan; and (b) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the Theater or cultural facility in accordance with the Midtown Cultural District Plan, or (ii) to lease or otherwise transfer such Theater or cultural facility for such use (which may include a lease or transfer to the City of Boston or its designee).
2. Development Plan Approval for Substantial Rehabilitation of Existing Theaters, Historic Buildings, and Landmarks. The Boston Redevelopment Authority may approve a Development Plan proposing substantial rehabilitation of an existing Theater, Historic Building, or Landmark if: (a) the Development Plan proposes substantial rehabilitation of an existing Theater, Historic Building, or Landmark, which the Applicant owns or will own at the time set for commencement of construction, in accordance with the provisions of paragraphs (i) and (ii) of this section; or (b) the Applicant and the fee simple owner (or agent thereof) (the "Owner") of an existing Theater, Historic Building, or Landmark enter into an agreement which agreement shall provide that a substantial rehabilitation of such a building shall be performed in accordance with the provisions of paragraphs (i) and (ii) of this section, and the Development Plan reflects the provisions of such agreement and the Applicant's undertaking to be bound by them. Under clause (b) above, an agreement shall be entered into which shall conform to the provisions of Section 38-25. In the case of existing Theaters, Development Plan approval shall also be subject to the provisions of Section 38-14.1. In the case of Landmarks, the substantial rehabilitation must also be approved by the Boston Landmarks Commission in

accordance with Chapter 772 of the Acts of 1975, as amended from time to time.

- (i) Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an existing Theater qualifying as a public benefit for Development Plan approval consists of: (A) major interior or structural changes for the purpose of improving the Theater's design and its viability for Theater use, including an equipment level commensurate with its anticipated use, as detailed in the Midtown Cultural District Plan, or (B) historic restoration of the interior of the Theater. Major exterior renovations and improvements, such as a facade restoration, may also be included in the qualification as substantial rehabilitation. Substantial rehabilitation to the interior of a Theater may include, without limitation, such work as expanding stage or wings, raking the orchestra, increasing rehearsal, dressing room, or lobby space, or historic restoration. It may also include conversion to Theater use of an original Theater currently in other use. Substantial rehabilitation does not mean normal Theater maintenance, painting, or improvements to mechanical systems alone.
 - (ii) Qualification of Substantial Rehabilitation of Landmark or Historic Building. Substantial rehabilitation of a Landmark or Historic Building qualifying as a public benefit for Development Plan approval consists of alterations or repairs made to a building or structure, costing in excess of fifty percent (50%) of the physical value of the building or structure, in accordance with the Boston Landmarks Commission's standards and criteria for landmark rehabilitation, if any. The physical value of a structure or structures shall be deemed to be the assessed value of the structure, as recorded on the assessment rolls of the City as of the January 1 preceding the date of the application for Development Plan approval.
3. Development Plan Approval for Creation of Affordable Housing. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or cause the construction of housing if: (a) at least seventy-five percent (75%) of the gross floor area of the Proposed Project is devoted to Residential Uses; (b) either (i) at least ten percent (10%) of the dwelling units proposed in the Development Plan on site are Affordable; or (ii) the Applicant creates or causes the creation of Affordable dwelling units by making a dollar contribution to the Neighborhood Housing Trust or another entity acceptable to Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Proposed Project by 0.2, and multiplying the result by the average per unit assistance granted by the Neighborhood Housing Trust for the twelve months prior to the effective date of this article, at the then present value; and (c) a minimum

of 0.7 off-street parking space is provided for each dwelling unit. On-site Affordable units shall be comparable in size, appearance, and quality to other dwelling units within the Proposed Project. Any dollar contribution to be made pursuant to this paragraph 3 shall be made at the time that a building permit is issued for the applicable phase of the Proposed Project.

4. Use of Theaters and Cultural Facilities. The use of any Theater or cultural facility which is developed or substantially rehabilitated for qualification as a public benefit for Development Plan approval under this article shall be limited to the uses specified in the Development Plan. Such uses shall be consistent with the uses specified in the Midtown Cultural District Plan. To guarantee the continuation of such uses, the Applicant may, but shall not be required to, lease or otherwise transfer any right, title, and interest in the Theater or cultural facility to the City of Boston or its designee.
5. Priority in Development Plan Approval for Substantial Rehabilitation of Existing Theaters, Landmarks, and Historic Buildings. In its weighing of the benefits of a Development Plan proposing substantial rehabilitation of an existing Theater, Landmark, or Historic Building, the Boston Redevelopment Authority shall give priority to the substantial rehabilitation of existing Theaters; second priority to the substantial rehabilitation of Landmarks; and third priority to the substantial rehabilitation of Historic Buildings which are not existing Theaters or Landmarks.
6. Amendment of Development Plan. No addition of floor area to a Proposed Project in a PDA, and no change in the use category of any public benefit qualifying a Proposed Project for Development Plan approval, and no exterior alteration of a rehabilitated Landmark, Historic Building, or Theater qualifying a Proposed Project for Development Plan approval, shall proceed unless either (i) there has been an amendment to the Development Plan; or (ii) the Boston Redevelopment Authority has certified to the Commissioner of Inspectional Services that the addition of floor area, the change in use category, or exterior alteration is consistent with the approved Development Plan for such PDA or the portion thereof to which said work relates. See Section 80C-7 (PDA Review: Amendment of PDA Plans) for the procedure for amendment of a Development Plan.
7. Development Plan Approval for Development of New Usable Open Space in the Hinge Block (PDA-IV). The Boston Redevelopment Authority may approve a Development Plan proposing to develop or to cause the development of a usable open space if: (a) either (i) the new usable open space is appropriate in condition, size, and type to be useful, under the circumstances pertaining at the time of the application for Development Plan approval, to contribute to the balance of built and open space responsive to the needs of the Midtown Cultural District, as identified in the

Midtown Cultural District Plan; or (ii) the Development Plan details provision of sufficient assistance for successful development of usable open space, including provision of assistance for maintenance, programming, or other assistance, as identified in the Midtown Cultural District Plan; and (b) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to maintain the open space in accordance with the Midtown Cultural District Plan, or (ii) to lease or otherwise transfer such open space for such use and maintenance (which may include a lease or transfer to the City of Boston or its designee).

(↑As amended on March 15, 1993, May 9, 1996, and July 31, 1997.)

↓SECTION 38-15. **Planned Development Areas: Recommendations from Community Groups and City Departments.** See Section 80C-5.3 (BRA Procedures for PDA Review: Public Notice and Comment) concerning procedures for public notice and comment in the review of a Development Plan.

(↑As amended on May 9, 1996 and July 31, 1997.)

↓SECTION 38-16. **Planned Development Areas: General Design and Environmental Impact Standards.** In addition to the Large Project Review requirements set forth in Article 80 of this code, Proposed Projects submitted for approval as part of an application for Development Plan approval under Planned Development Area Review shall be in substantial accord with the General Design and Environmental Impact Standards described herein. The purpose of these additional standards is to maintain and improve the quality of life in the Midtown area, with particular regard to Chinatown, the Midtown Cultural District, Bay Village, the Boston Common and the Public Garden, and Landmarks and Historic Buildings.

1. Shadow Criteria. Each Proposed Project shall be arranged and designed in a way to assure that it does not cast shadows for more than two hours from 8:00 a.m. through 2:30 p.m., on any day from March 21 through October 21, in any calendar year, on any single Shadow Impact Area, depicted on Map 1A of this code, that either (a) is not cast in shadow during such period on such days by structures existing as of the effective date of this article; or (b) would not be cast in shadow during such period on such days by structures built to the as-of-right limits allowed by this article, whichever structures cast the greater shadow, provided that an area of the Boston Common not to exceed one acre may be shaded beyond the two-hour period, such area to be calculated as the sum of the areas shaded at the two-hour limit by the Proposed Project and all structures constructed after the effective date of this article exceeding the building sizes described in clauses (a) and (b), above. Any Proposed Project casting any net new shadow on the Boston Common by reason of its exceeding the building sizes described in clauses (a) and (b), above, shall

be required to mitigate the impact by contributing to turf, tree, statuary, park furniture, and path maintenance and capital improvements that are designed to promote the passive or active enjoyment of the Boston Common. The contribution, as determined in consultation with the City of Boston acting through its Parks and Recreation Department and appropriate community and neighborhood groups, and in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing, shall be based on the following factors: (i) the amount and duration of the shadow as it diminishes the sunlit area of the Boston Common; (ii) the costs of mitigating the shadow impact on sunlit areas; and (iii) such other factors as are related to preserving the qualities of the Boston Common affected by the Proposed Project, including but not limited to the decreased enjoyment of the Boston Common as a result of additional shadow.

2. Wind. Buildings shall be designed to avoid excessive and uncomfortable downdrafts on pedestrians. Each Proposed Project shall be shaped, or other wind-baffling measures shall be adopted, so that the Proposed Project will not cause ground-level ambient wind speeds to exceed the standards in Table B of this section, as follows:

TABLE B

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity</u>	<u>Permitted Occurrence Frequency</u>
Limit for All Pedestrian Areas	13.8 m/sec (31 mph)	1.0%
Major Walkways- Especially Principal Egress Paths for High-Rise Buildings	13.8 m/sec (31 mph)	1.0%
Other Pedestrian Walkways- Including Street and Arcade Shopping Areas	11.2 m/sec (25 mph)	5%
Open Plazas and Park Areas Walking, Strolling Activities	6.3 m/sec (14.1 mph)	15%
Open Plaza and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

For the purposes of the above standards, "effective gust velocity" is defined as meaning hourly wind speeds + 1.5 root-mean-square of the fluctuating velocity component measured at the same locations over the same time interval.

3. Transportation Access. The Transportation Access Plan, if required for Large Project Review, shall demonstrate that the location of the Proposed Project with respect to vehicular access and circulation, and proximity to other transportation systems, is suitable for increased floor area. By its design and management, the Proposed Project shall emphasize use of mass transit and feasible measures to be undertaken to limit the impact of the Proposed Project on traffic congestion.
4. Skyline Plan. Each Proposed Project shall be generally consistent in height and form with the modified high spine/cluster skyline plan described in the text of the Midtown Cultural District Plan. The minimum distance between separate building elements of more than one hundred fifty-five (155) feet in height is one hundred twenty-five (125) feet; provided that this

provision is not applicable where two or more public ways lie between such building elements, or no public way lies between such building elements. In its review of the application for Development Plan approval, the Boston Redevelopment Authority shall take into consideration existing structures, and structures for which Zoning Relief has been granted by the Board of Appeal, or structures for which Development Plan approval has been granted by the Boston Redevelopment Authority.

5. Landmarks and Historic Buildings. Each Proposed Project shall be generally designed and arranged in such a way as to limit the reduction of light and air surrounding, and physical isolation of or intrusion on, Landmarks and Historic Buildings and to minimize the shadow impact on their facades.
6. Enhancement of Pedestrian Environment. Each Proposed Project shall enhance the pedestrian environment, by means such as: (a) pedestrian pathways connecting to mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) materials, landscaping, public art, lighting, and furniture that enhance the pedestrian environment; (d) shopping or entertainment opportunities, including interior retail uses; (e) pedestrian systems that encourage more trips on foot; and (f) other attributes that improve the pedestrian environment and pedestrian access to mass transit stations; (g) appropriate management and maintenance of public space within the Proposed Project; and (h) preservation or recreation of the historic street pattern of the district through exterior or interior pedestrian passageways and through-block corridors.
7. Boston Civic Design Commission Review. Each Proposed Project shall be subject to review by the Boston Civic Design Commission, in accordance with the provisions of Article 28.

(↑As amended on March 15, 1993 and May 9, 1996.)

SECTION 38-17. Planned Development Areas: Relocation Assistance. Any Development Plan submitted for approval shall provide a plan for relocation assistance for any resident, or store with street frontage primarily serving the local retail business needs of residents of the neighborhood, grocery store with street frontage, or local eating place with street frontage, which will be directly displaced by the Proposed Project. Such relocation assistance shall be comparable to the relocation assistance required under Chapter 79A of the General Laws as amended from time to time and regulations promulgated thereunder.

↓**SECTION 38-18. Midtown Cultural District Use Regulations.** In the Midtown Cultural District the use of land and structures is hereby regulated as provided in this section. The provisions of Article 8 apply only as specified in this

section, except that Section 8-6 applies. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 38-18.

1. Ground Level and Cultural Uses. Within any Proposed Project, uses with street frontage located on the ground level or entered by stairs from a sidewalk entry, except for lobby entrances, are limited to Ground Level Uses and Cultural Uses, as listed in Appendix B to this article. All other uses with street frontage which are allowed by this section are conditional uses when located on the ground level or entered by stairs from a sidewalk entry.
2. Housing Priority Areas. The Housing Priority Areas are shown on Map 1A of this code. Notwithstanding any other provision of this article to the contrary, within these areas, for any Proposed Project which has more than ten thousand (10,000) square feet and which involves new construction or exterior alterations to an existing structure, or change in the use of a building, of up to one hundred fifty-five (155) feet in height, a minimum of three (3) square feet of gross floor area shall be devoted to Residential Uses allowed under Section 38-18.5 for each square foot of gross floor area not devoted to such Residential Uses; provided that in a Proposed Project which is to exceed one hundred fifty-five (155) feet in height, all of the floor area above a height of one hundred fifty-five (155) feet shall be devoted to Residential Uses allowed under Section 38-18.5, and a minimum of one (1) square foot of gross floor area shall be devoted to Residential Uses allowed under Section 38-18.5 for each three (3) square feet of gross floor area not devoted to such Residential Uses in the Proposed Project as a whole. The Housing Priority Area regulation does not apply to the ground-floor level or to any space devoted to Cultural Uses, uses accessory to Cultural Uses, or space devoted to community services. An Applicant for any Proposed Project subject to the provisions of this paragraph may construct or rehabilitate space for allowed Residential Uses within the same Housing Priority Area and aggregate the space for allowed Residential Uses and the space for non-Residential Uses within the same Housing Priority Area to meet the ratio provided in this paragraph so long as the different Proposed Projects are completed within any consecutive period of twenty-four months.
3. Neighborhood Business Opportunities. An Applicant for any Proposed Project with fifty thousand (50,000) or more square feet of floor area available for lease shall use Best Efforts to market space within the Proposed Project to Neighborhood Business Establishments from Chinatown on terms comparable to those for other potential users of such space, as detailed in the remainder of this paragraph, for a period of not less than ten (10) years. Such Best Efforts shall be detailed in a

Neighborhood Business Opportunity Plan. If the Proposed Project is subject to Large Project Review, such Plan shall be submitted as part of such review. The Neighborhood Business Opportunity Plan shall take into account the size of the Proposed Project; the minimum user size (i.e., the number of square feet of each type of space) to which the Applicant contemplates leasing at identified stages of its marketing effort; and the uses permitted by the Applicant's leasing plan for office and retail space.

"Best Efforts" means reliance on traditional methods of leasing; and, whenever those traditional methods prove insufficient to afford a meaningful opportunity to Neighborhood Business Establishments to lease space within the Proposed Project, subject to the provisions of this paragraph 3, the Applicant shall take other affirmative measures to sufficiently afford such an opportunity. The measures to be taken to satisfy Best Efforts shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing.

A Neighborhood Business Opportunity Plan shall not require that the Applicant lease space to Neighborhood Business Establishments under any terms or conditions that are in any respect inconsistent with terms or conditions generally applicable to other lessees in the Proposed Project.

4. Inclusion of Day Care Facilities. The provisions of this paragraph apply only to Proposed Projects to exceed a building height of one hundred twenty-five (125) feet, or an FAR of eight (8), or both. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, which equals or exceeds one hundred thousand (100,000) square feet, up to two hundred thousand (200,000) square feet, shall devote to day care facilities an amount of floor area equal to at least two percent (2%) of the Proposed Project's gross floor area. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, which equals or exceeds two hundred thousand (200,000) square feet, up to five hundred thousand (500,000) square feet, shall devote to day care facilities an amount of floor area equal to at least four thousand square feet. Any Proposed Project having a gross floor area which equals or exceeds five hundred thousand (500,000) square feet, up to one million (1,000,000) square feet, shall devote to day care facilities an amount of floor area equal to at least eight thousand (8,000) square feet. Any Proposed Project having a gross floor area which equals or exceeds one million (1,000,000) square feet shall devote to day care facilities an amount of floor area equal to at least twelve thousand (12,000) square feet. An Applicant for a Proposed Project subject to the provisions of this paragraph may fulfill its obligations under this paragraph by: (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created, within the Midtown

Cultural District, Bay Village, or Chinatown. Any Proposed Project subject to the provisions of this paragraph shall devote to on-site day care facilities an amount of floor area equal to at least either four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this paragraph shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

5. Allowed Uses. No land or structure in the Midtown Cultural District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except under the provisions of Section 38-18.6 and Article 6, Conditional Uses, unless such use is specified in this Section 38-18.5. Any use so specified shall be allowed as a matter of right, subject only to the requirements set forth in this Section 38-18 and Section 38-21.
 - (a) Residential Uses. Limited to multifamily dwelling, artists' live/work space, apartment hotel, lodging or boarding house, temporary housing shelters, group residence, limited, as defined in clause (22B) of Section 2-1, and any dwelling converted for more families where structures after conversion will conform to this code. Residential uses include any Affordable dwelling units, including but not limited to Affordable dwelling units which are rental units, condominiums, or limited equity share cooperatives.
 - (b) Restaurant and Entertainment Uses. Limited to the service or sale of food or drink for on-premises consumption; concert hall; Theater, commercial or nonprofit (including motion picture or video Theater, but not drive-in Theater); art galleries, nonprofit or for profit.
 - (c) Office Uses. Limited to offices of cultural groups; offices of community service organizations; business or professional offices; real estate, insurance, or other agency or government office; office building; post office; bank (other than drive-in bank) or similar establishment; dance, Theater, or music rehearsal studio; artist studio or work space.
 - (d) Hotel or motel.
 - (e) Deleted on February 22, 1991.

- (f) Day care center, family care center, nursery school, kindergarten, elementary or secondary school, or community health center or clinic.
- (g) Recreational and Community Uses. Limited to private grounds for games and sports not conducted for profit; other social, recreational, or sports center conducted for profit; private club (including quarters of fraternal or sororal organizations) operated for members only; adult education center or community center building; college granting degrees by authority of the Commonwealth, but only if such authority is accorded to an adult education facility existing within the Midtown Cultural District prior to the effective date of this article; settlement house; the maintenance and operation of any amusement game machine in a private club, dormitory, fraternity or sorority house, or similar noncommercial establishment, or in any commercial establishment.
- (h) Public Service Uses. Limited to public service pumping station, substation, or automatic telephone exchange, subject to St. 1956, c. 665, s. 2.
- (i) Wholesale Uses. Limited to office or display or sales space of a wholesale, jobbing, or distributing house; and provided that not more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (j) Service Uses. Limited to video or film production studio; barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop; framer's studio; caterer's establishment; photographer's studio; printing plant; taxidermist's shop; upholster's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; funeral home; undertaker's establishment; mortuary; research laboratory; radio or television studio; or similar use provided that in laundries and cleaning establishments, only nonflammable solvents are used for cleaning; animal hospital or clinic.
- (k) Retail Uses. Limited to store primarily serving the local retail business needs of the neighborhood; artist supply store; grocery store; department store, furniture store, general merchandise mart or other store serving the general retail business needs of a major part of the city, including accessory storage.
- (l) Uses specified in Appendix B hereto.

- (m) Adult Entertainment Uses. As set forth in Use Items No. 34A and No. 38A of Table A of Section 8-7, adult entertainment uses shall be allowed only within the Adult Entertainment District, established pursuant to Section 3-1A by Map Amendment No. 130.
 - (n) Institutional Uses. Limited to place of worship, monastery, convent, or parish house; elderly care facility; nonprofit library or museum, not accessory to another institutional use; or clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, provided that such use will occupy interior space being used by the same institution for another institutional use at the time such change is proposed.
 - (o) Accessory Uses subject to the limitations and restrictions of Article 10, limited to: (i) a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use, a hotel or motel, a group care residence, or a dormitory, fraternity, or sorority house; (ii) a swimming pool or tennis court; (iii) the storage of flammable liquids and gases incidental to a lawful use; (iv) the manufacture, assembly, or packaging of products sold on the lot; (v) the maintenance and operation of not more than four amusement game machines accessory to eating and drinking establishments; (vi) any use ancillary to, and ordinarily incident to, a lawful main use, provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory.
6. Conditional Uses. No land or structure in the Midtown Cultural District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Section 38-18.6. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the requirements set forth in this Section 38-18. The continued right to a conditional use is dependent upon maintaining the character and extent of operations and structures.
- (a) Residential Uses. Limited to orphanage, and any dwelling converted for more families, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.
 - (b) Group Care Residence. Unless otherwise allowed pursuant to paragraph 5(a) of this section.
 - (c) Light Manufacturing Uses; kennel or pound.

- (d) Parking lot or parking garage.
- (e) Wholesale uses. Limited to accessory storage (other than of flammable liquids, gases, and explosives) in roofed structures or office or display or sales space of a wholesale, jobbing, or distributing house where more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (f) Fast Food Restaurant Uses. Limited to sale over the counter, not wholly incidental to a use listed under paragraph 5(b) or 5(k) of this section, of on-premises prepared food or drink for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
- (g) Rental motor vehicle and trailer agency accessory to a hotel or motel, provided that no rental vehicles or trailers are parked on the street and that exterior lighting is arranged to shine downward and away from residences.
- (h) The change of use of any Theater, unless excepted pursuant to Section 38-21.1, to another use; the change of use of any Residential Use allowed under Section 38-18.5(a) to another use.
- (i) Transportation Uses. Limited to bus terminal, bus station, subway station, or shuttle service to airlines.
- (j) Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.
- (k) Institutional Uses. Limited to college or university granting degrees by authority of the Commonwealth, not including those allowed under Section 38-18.5(g); fraternity or sorority house or dormitory; trade, professional, or other school; penal or correctional institution; detention home; machine shop or other noisy activity accessory to a school, college, or university, adequately sound-insulated to protect the neighborhood from unnecessary noise; hospital, sanatorium, or similar institution not for correctional purposes, whether or not providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, providing

custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; library or museum not conducted for profit and accessory to another institutional use not allowed under paragraph 5(n) of this section; research laboratory not accessory to another institutional use; clinic not accessory to a main use.

(l) Service Uses. Check cashing business.

(m) Accessory Uses. Limited to: (i) a garage or parking space for occupants, employees, customers, students, and visitors, such use not accessory to a residential use, a hotel or motel, a group care residence, or a dormitory, fraternity, or sorority house; (ii) the keeping of animals, other than households pets, provided that every enclosure is sufficient to prevent a nuisance to any adjacent residences or eleemosynary institutions; (iii) the keeping of laboratory animals incidental to an allowed or conditional institutional use, provided that all resulting noise, dust, fumes, gases, odors, and refuse matter are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to health or safety; and (iv) in educational institutions with more than four hundred (400) full-time students, and in hospitals with more than fifty (50) beds, incidental uses and services ordinarily found in connection therewith and primarily for the patients and staff or students and faculty, when conducted wholly within a building and entered from within the building where there is but one building on the lot or from an entrance not directly facing a street or lot line where there is more than one building on a lot, unless accessory to a hospital or sanatorium or clinic which is an allowed use.

7. Forbidden Uses. No land or structure in the Midtown Cultural District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use specified in the use item column of Table A of Section 8-7 if such use is not specified in Sections 38-18.5 and 38-18.6 as an allowed or conditional use, except for such nonconforming uses as may be allowed to be continued under the provisions of Article 9.

(↑ As amended on February 22, 1991, March 15 and September 30, 1993, October 6, 1994, May 9, September 20, and November 21, 1996, and July 31, 1997.)

↑SECTION 38-19. **Specific Design Requirements.** Proposed Projects within the Midtown Cultural District shall comply with the specific design requirements established in this section. Except as provided in Article 6A, no Zoning Relief shall be granted from the provisions of this section.

1. Street Wall Continuity. The Street Wall of any Proposed Project shall be built:
 - (a) to be coextensive with at least eighty percent (80%) of the "Existing Building Alignment" of the block on which the Proposed Project fronts, established pursuant to Section 18-2 of this code; or
 - (b) to a depth from the street line equal to that of at least eighty percent (80%) of the Existing Building Alignment of either block adjacent to the block on which the Proposed Project is located, if there is no Existing Building Alignment of such block.

Recess Above Display Window Area Street Wall*

<u>Maximum Depth</u>	<u>Maximum Aggregate Surface Area</u>
fifteen (15) feet	twenty percent (20%)

* Recesses do not include windows, which must be indented.

2. Street Wall Height. The "Street Wall Height" of Proposed Projects within the Midtown Cultural District shall not exceed ninety (90) feet. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 38-19.
3. Display Window Area Regulations. The provisions of this paragraph apply only to Proposed Projects of fifty thousand (50,000) or more square feet. The term "Display Window Area" means that volumetric area of any such Proposed Project that is (i) within a depth of four (4) feet from the Street Wall of the Proposed Project; and (ii) between a height of two (2) feet above the ground floor and the height of the underside of the floor structure of the second floor of the Proposed Project, or fourteen (14) feet, whichever is less. The Display Window Area excludes any area of Street Wall serving as ingress or egress to the interior of the Proposed Project, including off-street loading berths or accessory off-street parking, or lobby or storefront entrances; provided that no single lobby area shall occupy more than forty (40) feet of street frontage.
 - (a) Display Window Area Street Wall Transparency. The Display Window Area Street Wall shall be appropriately glazed and transparent for attractiveness to pedestrians, as certified to by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review. Article 11 of this code applies

to any painting or signs on the Display Window Area Street Wall, and to signs in the Display Window Area.

- (b) Display Window Area Street Wall Continuity. The Display Window Area Street Wall shall be sufficiently coextensive with the Street Wall line, established pursuant to paragraph 1 of this section, to spatially reinforce such Street Wall line.

Display Window Area Street Wall Recesses*

<u>Maximum Depth</u>	<u>Maximum Aggregate Surface Area</u>
ten (10) feet	thirty percent (30%)
two (2) feet	fifty percent (50%)

* The restrictions on recesses are not applicable to pedestrian arcades.

- (c) Display Window Area Usage. To a depth of at least two (2) feet behind the Display Window Area Street Wall there shall be: (i) an area for the display of goods and services available for purchase on the premises; or (ii) an area for exhibits and announcements. The provisions of this subparagraph are not applicable to foyer space for cultural activities, restaurants, or other active storefront uses.

4. Setback Requirements.

- (a) Sky Plane Setbacks. Other than decorative cornices and other surface ornamentation, every portion of a Proposed Project (including, but not limited to, mechanical equipment) above the Street Wall Height of such Proposed Project shall be set back by not less than the amount of the "Sky Plane Setbacks" established in Table D for the Street Wall Heights and building heights of one hundred fifty-five (155) feet and two hundred thirty-five (235) feet. Portions of a Proposed Project more than one hundred fifty-five (155') feet high should be treated in a manner to create a visually distinctive roof or other termination of the facade of the Proposed Project.

The amount of the Sky Plane Setback at various heights for each wall of a building depends on whether the particular wall faces on a street, as identified below in Table C, or on a side lot line. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 38-19.

TABLE C

Streets on Which Setbacks Are Required

Arlington Street	Kingston Street
Avery Street	LaGrange Street
Bedford Street	Mason Street
Bosworth Street	School Street
Boylston Street	Province Court
Bromfield Street	Province Street
Charles Street South	Stuart Street
Chauncy Street	Summer Street
Columbus Avenue	Temple Place
Essex Street	Tremont Street
Franklin Street	Warrenton Street
Hadassah Way	Washington Street
Hamilton Place	West Street
Harrison Avenue	Winter Street

TABLE D

Sky Plane Setbacks
Minimum Depth of Setback from Street Wall*

<u>Location</u>	<u>Above Street Wall Height</u>	<u>Above 155' (Total Setback from Street Wall)</u>	<u>Above 235' (Total Setback from Street Wall)</u>
Street listed in Table C	10'	15'	15'
PDA-I			
North-South Streets	35'	35'	35'
East-West Streets	15'	15'	35'
PDA-II			
North-South Streets	25'	35'	35'
East-West Streets	15'	15'	35'
PDA-III	15'	15'	25'
PDA-IV	10'	15'	15'
Landmarks	35'	35'	35'

* With respect to streets in more than one setback category, the more restrictive provision of Table D governs. Table D governs only streets listed in Table C.

The Sky Plane Setback provisions established in this paragraph shall not be applicable to the extent that, as a consequence of such provisions, the maximum possible gross floor area for any floor of a Proposed Project would be less than nine thousand (9,000) square feet.

- (b) Maximum Floor Plates. Notwithstanding any provision in this Section 38-19 to the contrary, above a height of one hundred twenty-five (125) feet the average gross floor area per floor of separate elements of a Proposed Project shall not exceed twenty-two thousand five hundred (22,500) square feet; and no single floor shall exceed a maximum floor area of twenty-five thousand (25,000) square feet.
 - (c) The principal facade of a building may violate the setback requirements up to the one hundred fifty-five (155) foot level, up to a maximum of 35 feet horizontal dimension or one bay or thirty percent (30%) of total horizontal length of the principal facade, whichever is greater.
 - (d) Corner Conditions for Corner Lot Buildings. The corner condition may be either a continuous curve that follows the curve of the street or a notched setback at the intersection of the two facade planes. The treatment may be a curve, a projection (bay), or a recessed element. The maximum horizontal dimension of the notch cannot exceed one bay or 35 feet from the intersection of the two planes, whichever is less. The form and character of the treatment will be determined through the Urban Design Component of Large Project Review.
5. Small Business Expansion Area. To facilitate the further expansion of small businesses on the ground level in the Midtown Cultural District, this paragraph establishes a "Small Business Expansion Area." The ground level and Street Walls of the streets listed below in Table E constitute the Small Business Expansion Area. Within the Small Business Expansion Area, the maximum street frontage of any single use is fifty (50) feet, and the maximum ground level floor area to be devoted to any single use with street frontage is three thousand (3,000) square feet.

TABLE E

Small Business Expansion Area

<u>Street</u>	<u>From</u>	<u>To</u>
Chauncy Street	Avenue de Lafayette	Essex Street
Essex Street	Washington Street	Kingston Street
Harrison Avenue	Hayward Place	Essex Street
Washington Street	Stuart Street	Boylston Street

(↑As amended on March 15, 1993 and May 9, 1996.)

↑SECTION 38-20. **Design Review and District Design Guidelines for Protection Areas.** Within the Protection Areas established in Section 38-5 and depicted on Map 1A of this code, any Proposed Project for exterior alteration or construction (excluding rooftop structures and signage and displays allowed pursuant to Section 38-6) shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component). Notwithstanding any contrary provision of Section 80E-2.1, such review shall be applicable whether or not any such Proposed Project is subject to the jurisdiction of the Boston Landmarks Commission or any other architectural board or commission having design review authority and established pursuant to a general or special law of the Commonwealth of Massachusetts.

To be consistent with the design guidelines established in this Section 38-20, a Proposed Project shall be designed such that the exterior proportions, scale, massing, window treatment, materials, colors, and architectural detailing are compatible with the observable historical and architectural character of other buildings in the area within which the Proposed Project is located, and with streets and open spaces to which it is visually related, as identified in the Midtown Cultural District Plan. To preserve a lot-by-lot appearance, facade ornamentation should be varied, and facades should be divided into modules or bays to reflect the lot width established by historic buildings within each area and to continue the established bay rhythm of each block.

1. Special Facade Considerations. In reaching its decision, pursuant to Section 80E-4.1 (Standards for Small Project Review Approval: Design Component), the Boston Redevelopment Authority shall consider whether the Proposed Project will have an adverse effect on: (a) the character of the Ladder Blocks Protection Area as an area within which there are notable terra cotta facades; (b) the character of the Boston Common and Public Garden Protection Area as an area within which masonry facades predominate; (c) the character of the Washington Street Theater Protection

Area as an area within which varied ornamental facades related to Theater uses predominate; or (d) the lot-by-lot appearance of the district.

(↑ As amended on March 15, 1993, May 9, 1996 and July 31, 1997.)

SECTION 38-21. Restrictions on Change of Use or Occupancy of Theaters.

The Commissioner of the Inspectional Services Department shall not issue a change of use or occupancy permit for any Theater within the Midtown Cultural District, as identified in the Midtown Cultural District Plan, except in accordance with the provisions of this section.

1. Demolition of Unsafe Theaters. The Commissioner of the Inspectional Services Department may issue a demolition permit where the Theater or building is unsafe and demolition is required pursuant to the provisions of the Commonwealth of Massachusetts State Building Code.
2. Authorized Change of Use or Occupancy of Theaters. Excepting the provisions of paragraph 1 of this section, the Commissioner of the Inspectional Services Department shall issue a change of use or occupancy permit for any Theater within the Midtown Cultural District under the provisions of Article 6 only if the Board of Appeal finds, after reviewing the recommendations, if any, of appropriate City departments and agencies, and appropriate community and neighborhood organizations in the Midtown and Chinatown areas, and in addition to all other conditions required under Section 6-3, Section 6-3A, and Section 6-4, where applicable, that: (a) change of use or occupancy of the Theater structure will not unduly diminish the historic character of the Midtown Cultural District as a cultural, entertainment, and theatrical showcase, taking into consideration: (i) current physical characteristics of the Theater that affect its suitability for use as a Theater, including but not limited to seating capacity, interior configuration, and location; (ii) history of its use as a Theater; (iii) the likelihood of its future use for Theater production; and (iv) the Applicant's plans for replacement of the Theater structure with performing arts facilities supportive of the objectives and specifications of the Midtown Cultural District Plan. In its approval of a conditional use under this Section 38-21.2, the Board of Appeal shall attach as conditions and safeguards, at a minimum, that: (b) the Applicant for any Proposed Project on the lot containing a portion or all of the former site of the Theater either (i) replace that Theater with a fully equipped new Theater or other cultural facility of a condition, size, and type which is appropriate, under the circumstances pertaining at the time of the permit application, to contribute to the balance of cultural facilities responsive to the needs of the Midtown Cultural District, as identified in the Midtown Cultural District Plan; or (ii) substantially rehabilitate or cause the substantial rehabilitation of an existing Theater, in accordance with the provisions of paragraph 3 of this

Section 38-21; and (c) the Applicant provide evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the Theater or cultural facility in accordance with the Midtown Cultural District Plan; or (ii) to lease or otherwise transfer such Theater or cultural facility for such use (which may include a lease or transfer to the City of Boston or its designee). In the case of a new Theater, the new Theater must provide for sufficient facilities to support Theater operations, such as administrative offices, rehearsal studio space, dressing room/green room space, and storage space, as identified in the Midtown Cultural District Plan. In the case of a Theater in a building or an interior designated as a Landmark, such permit must also be authorized by the Boston Landmarks Commission, in accordance with Chapter 772 of the Acts of 1975, as amended from time to time. The Applicant shall also enter into an agreement for substantial rehabilitation of an existing Theater, as detailed in Section 38-25, where applicable.

3. Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an existing Theater qualifying for approval under this Section 38-21 consists of: (a) major interior or structural changes for the purpose of improving the Theater's design and its viability for Theater use, including an equipment level commensurate with its anticipated use, as detailed in the Midtown Cultural District Plan; or (b) historic restoration of the interior of the Theater. Major exterior renovations and improvements, such as a facade restoration, may also be included in qualifying as substantial rehabilitation. Substantial rehabilitation to the interior of a Theater may include, without limitation, such work as expanding stage or wings, reraking the orchestra, increasing rehearsal, dressing room, or lobby space, or historic restoration. It may also include conversion to Theater use of a original Theater currently in other use. Substantial rehabilitation does not mean normal Theater maintenance, parking, or improvements to mechanical systems alone.

SECTION 38-22. Off-Street Parking Not Required. Within the Midtown Cultural District, off-street parking facilities are not required in any Proposed Project, except as provided in Section 38-14.3 (PDAs: Public Benefit Criteria; Creation of Affordable Housing).

SECTION 38-23. Adult Entertainment District. Within the Adult Entertainment District, adult entertainment uses, established in Section 38-18.5(m), are allowed, and the prohibition of moving or flashing signs in Section 11-2 does not apply.

↑ **SECTION 38-24. Off-Street Loading.** Article 24 provides the regulations governing provision and design of off-street loading facilities for the use of any structure or land not subject to Large Project Review. The provision and design of off-

street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review.

(↑As amended on May 9, 1996.)

SECTION 38-25. Agreement for Substantial Rehabilitation of Existing Theater, Landmark, or Historic Building. When an Applicant proposes substantial rehabilitation of an existing Theater, Landmark, or Historic Building under Sections 38-8, 38-14, or 38-21, the Applicant shall enter into an agreement that conforms to the provisions of this Section 38-25.

1. Parties to the Agreement. In the case of an existing Theater, Historic Building, or Landmark which the Applicant does not own or will not own at the time set for commencement of construction, the Applicant shall enter into an agreement with the fee simple owner (or agent therefor) (the "Owner") of the existing Theater, Historic Building, or Landmark, which agreement shall be acceptable in form and content to the Corporation Counsel of the City of Boston.
2. Enforceability of Covenants and Conditions. The covenants and conditions of the agreement shall run with the land and shall be enforceable by the Applicant, the Owner, and the City of Boston or its designee.
3. Completion of Substantial Rehabilitation. The agreement shall provide that the substantial rehabilitation called for in Section 38-8, 38-14, or 38-21 shall be completed to the point of receipt of a certificate of occupancy for the substantial rehabilitation on or before the date (the "Estimated Completion Date") that is the date of issuance of certificates of occupancy enabling the use and occupancy of one hundred percent (100%) of the gross floor area of the Proposed Project, or if the Proposed Project is being developed in phases, one hundred percent (100%) of the gross floor area of the applicable phase of the Proposed Project with which the substantial rehabilitation has been proposed in the Development Plan. If such construction cannot be so completed, the Applicant shall furnish the Boston Redevelopment Authority on or before the Estimated Completion Date with a notice so stating accompanied by a bond, letter of credit, guaranty, or assurance reasonably satisfactory to the Boston Redevelopment Authority (which assurance may be in the form of a direct deposit to the City of Boston or its designee), in an amount sufficient to cause such construction to be so completed, in which case the certificates of occupancy may issue.
4. Recording of Agreement. A notice of the agreement shall be recorded in the appropriate public records of Suffolk County, Massachusetts.

SECTION 38-26. **Regulations.** The Boston Redevelopment Authority may promulgate and amend from time to time regulations to administer this article.

SECTION 38-27. **Severability.** The provisions of this article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.

↓SECTION 38-28. **Appendices.** The following appendices are incorporated herein:

Appendix B - Ground Level Uses and Cultural Uses

Appendix E - Definitions

Historical Note: The following appendices to this article as originally adopted by Text Amendment No. 117A were deleted by Text Amendment No. 189, effective March 15, 1993:

Appendix A (copy of Map 1A)

Appendix C (map of Housing Priority Areas, with reference to Map 1A)

Appendix D (map of Shadow Impact Areas, with reference to Map 1A)

(↓As inserted on March 15, 1993.)

APPENDIX B to ARTICLE 38

Ground Level Uses and Cultural Uses

(See Sections 38-8 and 38-18.1.)

1. Ground Level Uses

The following uses are Ground Level Uses and are allowed uses within the Midtown Cultural District. This list is intended to be illustrative of Ground Level Uses and not exclusive, and includes uses and space accessory to ground level uses.

- Antique stores
- Appliances, repair shops
- Appliances, sales
- Artists' supply and music stores
- Athletic goods stores
- Bakeries and pastry shops
- Bank branch offices
- Bank machines, limited to two
- Barber shops
- Beauty parlors
- Bicycle shops: sales, rental, or repair
- Book stores and card stores*
- Cafes
- Candy stores
- Carpet, rug, linoleum, or other floor covering stores
- Churches
- Cigar stores
- Clock sales or repair shops
- Clothing retail establishments
- Clothing stores (men's, women's, children's apparel)
- Clubs, noncommercial
- Coffee shops
- Coin stores
- Community centers
- Dance halls, public
- Day care centers
- Delicatessens

* Subject to the provisions of Sections 38-18.5 (Allowed Uses) and 38-23 (Adult Entertainment District).

APPENDIX B to ARTICLE 38 (continued)

Department stores
Diners
Dressmaking shops, custom
Drug stores
Dry cleaning establishments
Dry goods stores
Eating or drinking places, in accordance with the provisions of Use Item No. 38*
Fabric stores
Fire stations**
Fishing tackle or equipment sales, or rental establishments
Florist shops
Food stores, including supermarkets, produce and grocery stores, markets,
health foods, delicatessens, prepared food/special food, spices and herbs,
coffees, teas, meat, fish, poultry, and cheese stores
Furniture stores
Furrier shops, custom
General merchandise mart
Gift shops
Hair products or headwear
Hardware stores
Historical exhibits
Hobby shops
Housewares stores
Household appliance repair shops
Ice cream stores
Interior decorating establishments
Jewelry shops
Kitchenware stores
Lamp shops
Laundromats
Leather goods stores
Libraries
Locksmith shops
Luggage stores
Millinery shops
Newsstands, enclosed
Office or business machine stores: sales or rental

* Subject to the provisions of Sections 38-18.5 (Allowed Uses) and 38-23 (Adult Entertainment District).

**Subject to St. 1956, c. 665, s. 2.

APPENDIX B to ARTICLE 38 (continued)

Offices (only lobby space is allowed at grade on streets bounding blocks)
Optician and optometrist establishments
Orthopedic stores
Paint stores
Parish houses
Parks, public or private
Party shops
Perfume shops
Pet shops
Phonographic repair shops
Photographic developing or printing establishments
Photographic equipment stores
Photographic studios
Photographic supply stores
Photostating establishments
Picture framing stores
Police stations**
Post offices
Printing establishments
Radio appliance shop: repair or sales
Record stores
Recreational centers (noncommercial)
Residences (only lobby space is permitted at grade on streets bounding blocks)
Schools
Sewing machine stores selling household machines
Shoe repair and shoeshine shops
Shoe stores
Sign painting shops
Skating rinks, outdoor ice
Sporting goods stores
Sports shops
Stamp stores
Stationery stores
Tailor shops, custom
Telegraph offices
Television repair shops
Tobacco stores
Tour operators
Toy stores

**Subject to St. 1956, c. 665, s.2.

APPENDIX B to ARTICLE 38 (continued)

- Typewriter stores
- Typewriter or other small business machine repair stores
- Variety or convenience stores
- Video or motion picture store, sale or rentals
- Wallpaper stores
- Watch sales or repair shops
- Yarn stores

2. Cultural Uses

The following uses are Cultural Uses, and are allowed uses within the Midtown Cultural District. This list is intended to be illustrative of Cultural Uses and is not exclusive.

- Art galleries, commercial and nonprofit
- Art metal craft shops
- Art needle work shops
- Auditoriums
- Costume rental establishments
- Motion picture or video production studio
- Museums
- Music stores
- Musical instruments, repair
- Philanthropic and nonprofit institutions which provide direct support to the arts
- Public Art, display space
- Studios: music, dancing, visual arts, or theatrical
- Theater*
- Ticket sales

* Subject to the provisions of Sections 38-18.5 (Allowed Uses) and 38-23 (Adult Entertainment District).

Definitions

For the purposes of this article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Adjusted Income" is defined as it is in 24 CFR Section 813.102 (1986), as amended, or as set forth in regulations adopted in accordance with Section 38-24.
2. "Affordable" means either an owner-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household for mortgage and insurance payments, real estate taxes, and condominium fees of not more than thirty percent (30%) of its Adjusted Income to occupy the unit, or a renter-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household for rent payments of not more than thirty percent (30%) of its Adjusted Income.
3. "Annual Income" is defined as it is in 24 CFR Section 813.106 (1986), as amended, or as set forth in regulations adopted in accordance with Section 38-24.
4. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 38-4, or the authorized agent of any such person or entity.
5. "Chinatown" means the area defined in Article 27D as the Chinatown Special Study Area, or any successor regulation of this code.
6. "Cultural Uses" means the uses listed in paragraph 2 of Appendix B to this article.
7. ["Development Plan"]. Deleted on May 9, 1996 by Text Amendment No. 228.
8. "Display Window Area Street Wall" means the area below the floor structure for the second floor of a Proposed Project, or fourteen (14) feet, whichever is less.
9. "Ground Level Uses" means the uses listed in paragraph 1 of Appendix B to this article.
10. "Historic Building" means any building listed from time to time in the Massachusetts Register of Historic Places.

APPENDIX E to ARTICLE 38 (continued)

11. "Landmark" means any building or structure from time to time designated a landmark pursuant to Chapter 772 of the Acts of 1975, as amended.
12. "Low-Income Household" means any household whose Annual Income does not exceed fifty percent (50%) of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
13. "Median Gross Income" is defined as it is by the United States Department of Housing and Urban Development, pursuant to 24 CFR Section 813.102 (1986), as amended, or as set forth in regulations adopted in accordance with Section 38-24.
14. "Midtown Cultural District Plan" means the comprehensive plan, adopted by the Boston Redevelopment Authority on January 12, 1987, pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of this code, which sets forth the planning policies, development controls, and design guidelines for the Midtown Cultural District, as amended from time to time.
15. "Midtown Cultural District" means the area depicted on Appendix A to this article and on a map entitled "Map 1A Midtown Cultural District" of the series of maps entitled "Zoning Districts - City of Boston" as amended.
16. "Moderate-Income Household" means any household whose Annual Income does not exceed eighty percent (80%) of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
17. "Neighborhood Business Establishment" means a business firm with fixed offices or distribution points located within the boundaries of the Chinatown/South Cove or Midtown Cultural District boundaries and with a business street address within such boundaries. A residential address may be used to establish status as a "Neighborhood Business Establishment."
18. "Proposed Project" means the erection, extension, or substantial demolition of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit.
19. "State Building Code" means the state building code and amendments and rules and regulations thereto as promulgated by the state building code commission under sections ninety-three, ninety-four, and ninety-five of Chapter One Hundred Forty-Three of the General Laws.

APPENDIX E to ARTICLE 38 (continued)

20. "Street Wall" means the exterior wall or portion of the exterior wall of a Proposed Project that faces a street on which such Proposed Project is located, and is below the Street Wall Height, determined pursuant to Section 38-18.2.
- ↑21. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the highest occupied floor of a Proposed Project shall not exceed the specified height limit for the applicable district or subdistrict by more than fifteen (15) feet for any Proposed Project to which the Substantial Accord standard applies. The issuance of a Certification of Consistency for Planned Development Area Review, pursuant to Section 80C-8, or the issuance of a Certification of Compliance for Large Project Review, pursuant to Section 80B-6, shall conclusively determine compliance with the requirements of this paragraph. This Substantial Accord standard applies only (1) north of Bromfield Street or (ii) within Planned Development Areas.
- (↑As inserted on August 17, 1989 and amended on June 14, 1990 and May 9, 1996.)
22. "Theater" means a facility equipped for the production and presentation of performing and visual arts events.
23. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

↓ARTICLE 39

NORTH STATION ECONOMIC DEVELOPMENT AREA

(↓Article inserted on September 13, 1989*)

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* Date of public notice: August 12, 1989 (see St. 1956, c. 665, s. 5).

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this article.)

SECTION 39-1. Statement of Purpose, Goals, and Objectives. The purpose of this article is to establish the zoning regulations for the comprehensive plan for the North Station Economic Development Area ("EDA") as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this code. The goals and objectives of this article, which constitutes the North Station EDA Plan, are to direct downtown development in a way that promotes balanced growth for Boston; to channel growth away from congested areas and toward underutilized sites; to create a gateway to the city by rail and highway from the north; to create a mixed-use district which includes office, retail, research and development, biomedical, institutional, residential, and sports facility and entertainment uses; to provide an area of the downtown to enhance the expansion of Boston's biomedical and research and development sectors; to create a complex of facilities and services which will foster economic growth in Boston and throughout the region; to increase the number of jobs in those sectors of the economy likely to employ Boston residents; to promote the creation and incubation of new research and development businesses and uses along with facilities supporting such uses; to create a functionally and architecturally unified district which is compatible with the North End and the Bulfinch Triangle; to create vistas and access to the Charles River; and to create new recreation space along the Charles River.

SECTION 39-2. Recognition of the North Station EDA Plan. In accordance with Section 27D-18 of this code, which requires production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the North Station area (Special Study Area No. 5), this article serves as the North Station EDA Plan. The Zoning Commission hereby recognizes this article (approved by the Boston Redevelopment Authority on June 29, 1989) as the North Station EDA Plan and also as the general plan for the North Station EDA and as the portion of the general plan for the City of Boston applicable to the North Station EDA. The preparation of the North Station EDA Plan by the Boston Redevelopment Authority is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 39-3. Physical Boundaries. The provisions of this article are applicable only in the North Station EDA. The boundaries of the North Station EDA are as shown on a map entitled, "Map 1B North Station Economic Development Area (supplemental to 'Map 1 Boston Proper')" of the series of maps entitled "Zoning Districts City of Boston," as amended.

(↑As amended on July 31, 1997.)

SECTION 39-4. Applicability. This article together with the rest of this code constitutes the zoning regulation for the North Station EDA and applies as specified in Section 4-1 regarding the conformity of buildings and land to this code. Application of the provisions of Article 27D to the North Station EDA is rescinded, and the North

Station EDA is deleted from the Downtown Interim Planning Overlay District, on the effective date of this article. Where conflicts between this article and the rest of this code exist, the provisions of this article shall govern. Except where specifically indicated in this article, the provisions of this article supersede Sections 13-1, 13-2, and 13-4 and Articles 8 and 14 through 24 of this code for the North Station EDA. The provisions of this article, however, are not applicable to the following Proposed Projects, which are governed by the rest of this code.

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the commission for adoption of this article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the commission for adoption of this article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

↑SECTION 39-5. **General Building Height and Floor Area Ratio.** Except in the New Boston Garden Development Area and the New Economy Development Area, as provided in following sections, a Proposed Project within the North Station EDA is allowed an as-of-right building height of one hundred twenty-five (125) feet and an as-of-right FAR of eight (8); provided that any Proposed Project shall have an as-of-right building height of one hundred fifty-five (155) feet and an FAR of ten (10) if such Proposed Project is subject to or shall elect to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(↑As amended on May 9, 1996.)

↑SECTION 39-6. **Building Height and FAR in the New Boston Garden Development Area.** Within that portion of the North Station EDA depicted on Map 1B of this code as the "New Boston Garden Development Area," a Proposed Project is allowed an as-of-right building height of four hundred (400) feet and an as-of-right FAR of eleven (11).

(↑As amended on July 31, 1997.)

↑SECTION 39-7. **Building Height and FAR in the New Economy Development Area.** Within that portion of the North Station EDA depicted on Map 1B of this code as the "New Economy Development Area", a Proposed Project is allowed an as-of-right building height of two hundred fifty (250) feet and an as-of-right FAR of eight (8); provided that any Proposed Project shall have an as-of-right building height of three hundred (300) feet and FAR of ten (10) if a Development Plan for such Proposed Project has been approved pursuant to Section 3-1A.a and Planned

Development Area Review. Notwithstanding the foregoing provision, a Proposed Project within that portion of the New Economy Development Area designated for public parking on Map 1B is limited to a maximum building height of sixty-five (65) feet.

(↑As amended on May 9, 1996 and July 31, 1997.)

↓SECTION 39-8. Establishment of Areas Within Which Planned Development Areas May Be Permitted.

1. PDA Permitted Areas; Review and Approval Requirements. PDAs, as described in Section 3-1A.a, may be established in the New Boston Garden Development Area and the New Economy Development Area. The purposes for establishment of PDAs are to establish a more flexible zoning law and encourage large-scale private development on underutilized sites in the North Station EDA. No PDA is permitted within the North Station EDA except within the New Boston Garden Development Area and the New Economy Development Area. See Article 80 concerning the applicability of Planned Development Area Review.
2. Planned Development Areas: Use and Dimensional Regulations. A Proposed Project described in a Development Plan shall be in Substantial Accord with the dimensional standards set forth in Section 39-6 (for the New Boston Garden Development Area) or 39-7 (for the New Economy Development Area), as applicable. Except where specifically indicated in this article, Section 39-13 (Specific Design Requirements) shall not apply to a Proposed Project described in a Development Plan.

For applicable use regulations, see Section 39-12 (North Station Economic Development Area Use Regulations).

(↑As amended on May 9, 1996 and July 31, 1997.)

SECTION 39-9. [Applicability of Future Amendments.] Deleted on May 9, 1996 by Text Amendment No. 228.

↓SECTION 39-10. Planned Development Areas: Standards for Development Plan Approval. For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(↑As amended on May 9, 1996 and July 31, 1997.)

↓SECTION 39-11. Planned Development Areas: Planning and Development Criteria. The Boston Redevelopment Authority may approve a Development Plan as

meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this article if the Development Plan proposes a plan for development, consistent with the goals of the North Station EDA Plan, including one or more of the following: (a) the diversification and expansion of Boston's economy in new or expanding areas of economic activity, such as private investment in the research and development of pharmaceutical and biomedical products, in accordance with the provisions of paragraph 1, below, of this section; (b) the construction of major, unique civic facilities, including a new sports and entertainment arena and a multimodal transportation center in accordance with the provisions of paragraph 2, below, of this section; or (c) the creation or retention of job opportunities, in accordance with the provisions of paragraph 3, below, of this section.

1. Development Plan Approval for Diversification and Expansion of Boston's Economy. The Boston Redevelopment Authority may approve a Development Plan proposing diversification and expansion of Boston's economy if a significant portion of the new gross floor area of the Proposed Project is for uses such as, but not limited to, the following: (a) research and development of pharmaceutical and biomedical products; (b) the design, development, fabricating, and testing of instruments for engineering, medical, dental, scientific, optical, or other similar professional use; or (c) other scientific research and development uses, including laboratories and facilities for theoretical, basic, and applied research, product development and testing, prototype fabrication, or production of experimental products prior to preclinical testing.
2. Development Plan Approval for the Construction of Major, Unique Civic Facilities. The Boston Redevelopment Authority may approve a Development Plan proposing construction of major, unique civic facilities if: (a) the Proposed Project includes an indoor sports and entertainment facility; and (b) the Proposed Project is coordinated with North Station as the major transportation gateway to downtown Boston by rail, auto, and public transportation from the north.
3. Development Plan Approval for the Creation or Retention of Job Opportunities. The Boston Redevelopment Authority may approve a Development Plan proposing creation or retention of job opportunities if it determines that: (a) employment positions in businesses occupying the Proposed Project are newly created in Boston, not relocated from other parts of the city; (b) the Development Plan provides for entrepreneurial assistance measures, such as (i) information, outreach, and education programs concerning new business development; (ii) general business planning and management counseling; (iii) technical assistance; and (iv) the establishment of general financing options; or (c) the use proposed will retain jobs in the city or will contribute otherwise to the economic health of

the city, from the Development Plan's showing that at least thirty-three percent (33%) of the gross floor area of the Proposed Project will be leased or used by entities identified in the Development Plan.

(↑As amended on May 9, 1996.)

↑SECTION 39-12. **North Station Economic Development Area Use**

Regulations. In the North Station EDA, the use of land and structures is hereby regulated as provided in this section. The provisions of Article 8 apply only as specified in this section, except that Section 8-6 applies. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 39-12 or in conformity with the provisions of an approved Development Plan with respect to land or structures located in a PDA.

1. Inclusion of Day Care Facilities. The provisions of this paragraph apply only to Proposed Projects which exceed one hundred thousand (100,000) square feet of gross floor area. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, which equals or exceeds one hundred thousand (100,000) square feet, shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table A of this section. An Applicant for a Proposed Project subject to the provisions of this paragraph may fulfill its obligations under this paragraph by (a) creating such facilities on-site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project, within the North Station Economic Development Area, the Bulfinch Triangle District, or the North End. Any Proposed Project subject to the provisions of this section shall devote to on-site day care facilities, of the total amount required to be provided pursuant to Table A, an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this paragraph shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE A

Provision of Day Care Facilities

<u>Size of Proposed Project (Gross Square Feet)</u>	<u>Minimum Day Care Facilities (Gross Square Feet)</u>
100,000 up to 200,000	2% of gross floor area
200,000 up to 500,000	4,000
500,000 up to 1,000,000	8,000
More than 1,000,000	12,000

2. Allowed Uses. No land or structure in the North Station EDA shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except under the provisions of an approved Development Plan for land or structures in a PDA, or Section 39-12.3 and Article 6, Conditional Uses, unless such use is specified in the Development Plan or in this Section 39-12.2. Any use so specified below shall be allowed as a matter of right, subject only to the provisions of this Section 39-12 or, in the case of a PDA, the approved Development Plan, except that in an OS (Open Space) district only the use specified in paragraph (q) below is allowed.
- (a) New Economy Uses. Limited to: basic research; research and development; product development or prototype manufacturing; biomedical technology; pharmaceutical research and development; research and medical laboratories.
- (b) Public Arena Uses. Limited to: the production and exhibition of professional and amateur sporting and athletic events; theatrical productions; concerts; public entertainment events; religious gatherings; large-scale meetings; concession services; private clubs serving members and guests; health club and sports medicine clinic; loading and servicing facilities, subject to Section 39-17; video production facilities; ticket sales facilities, and offices for building management and staff.
- (c) Residential Uses. Limited to: multifamily dwelling, artists' live/work space, apartment house, lodging or boarding house, temporary housing shelters, group residence, limited, as defined in clause (22B) of Section 2-1, and any dwelling converted for more families, where structures after conversion will conform to this code. Residential uses include any affordable dwelling units, including but not limited to affordable dwelling units which are rental units, condominiums, or limited equity share cooperatives.

- (d) Restaurant and Entertainment Uses. Limited to: the service or sale of food or drink for on-premises consumption, with or without dancing or entertainment; concert hall; theater, commercial or nonprofit (including motion picture or video theater, but not drive-in theater); art galleries, nonprofit or for profit; provided that uses described in Use Item 38A are forbidden.
- (e) Office Uses. Limited to: business or professional offices; real estate, insurance, or other agency or government office; office building; post office, or bank (other than drive-in bank) or similar establishment. (See also paragraph 2(n) of this section.)
- (f) Hotel or motel.
- (g) Deleted on February 22, 1991.
- (h) Day care center, family care center, nursery school, kindergarten, elementary or secondary school, or community health center or clinic.
- (i) Recreational and Community Uses. Limited to: private grounds for games and sports; other social, recreational, or sports and entertainment center conducted for profit; private club (including quarters of fraternal or sororal organizations) operated for members only; adult education center or community center building; settlement house; the maintenance and operation of any amusement game machine in a private club, dormitory, fraternity, or sorority house, or similar noncommercial establishment, or in any commercial establishment.
- (j) Public Service Uses. Limited to: public service pumping station, sub-station, or automatic telephone exchange, subject to St. 1956, c. 665, s. 2.
- (k) Wholesale Uses. Limited to: office or display or sales space of a wholesale, jobbing, or distributing house; and provided that not more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (l) Service Uses. Limited to: video or film production studio; barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop; framer's studio; caterer's establishment; photographer's studio; printing plant; taxidermist's shop; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; funeral home; undertaker's establishment;

mortuary; research laboratory; radio or television studio; or similar uses provided that in laundries and cleaning establishments, only nonflammable solvents are used for cleaning; animal hospital or clinic.

- (m) Retail Uses. Limited to: store primarily serving the local retail business needs of the neighborhood; artist supply store; grocery store; department store, furniture store, general merchandise mart or other store serving the general retail business needs of a major part of the city, including accessory storage; provided that uses described in Use Item 34A are forbidden.
- (n) Institutional Uses. Limited to: place of worship, monastery, convent, or parish house; elderly care facility; nonprofit library or museum, not accessory to another institutional use; research laboratory; clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, provided that such use will occupy interior space being used by the same institution for another institutional use at the time such change is proposed; hospital, sanatorium, convalescent or nursing home, elderly care facility, orphanage, or similar institution not for correctional purposes, whether or not providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; or clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons.
- (o) Accessory Uses subject to the limitations and restrictions of Article 10, limited to: conference facilities; auditoria; classrooms; a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use under paragraph 2(c) of this section, a hotel or motel, or a group care residence under paragraph 2(g) of this section; a swimming pool or tennis court; the storage of flammable liquids and gases incidental to a lawful use; the manufacture, assembly, or packaging of products sold on the lot; the maintenance and operation of not more than four amusement game machines accessory to eating and drinking establishments; the keeping of animals, other than households pets, provided that every enclosure is sufficient to prevent a nuisance to any adjacent residences or eleemosynary institutions; the keeping of laboratory animals incidental to an allowed institutional use, provided that all resulting noise, dust, fumes, gases, odors, and refuse matter are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to public health or safety; in educational institutions with more than four hundred (400) full-time students, and in hospitals with more than fifty (50) beds, incidental uses and services ordinarily found in connection therewith and primarily for the

patients and staff or students and faculty, when conducted wholly within a building and entered solely from within the building where there is but one building on the lot or from an entrance not directly facing a street or lot line where there is more than one building on a lot, unless accessory to a hospital or sanatorium or clinic which is an allowed use; research laboratory accessory to an allowed institutional use; and any use ancillary to, and ordinarily incident to, a lawful main use, provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory.

- (p) For land or structures in a PDA, uses specified in the approved Development Plan, including a parking lot or parking garage or other parking space, whether or not accessory, which would otherwise be a conditionally permitted use under Sections 39-12.3(d) and 39-12.3(m).
- (q) Open Space, as described in Use Item No. 27 of Table A of Section 8-7.

3. Conditional Uses. No land or structure in the North Station EDA shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Section 39-12.3. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the regulations set forth in this Section 39-12, or may be allowed by the Zoning Commission in its approval of a Development Plan for a PDA; except that an OS district, only the use specified in paragraph (m) below may be authorized under Article 6 or under a Development Plan. The continued right to a conditional use granted under Article 6 is dependent upon maintaining the character and extent of operations and structures.

- (a) Residential Uses. Limited to: temporary dwelling structure, orphanage, and any dwelling converted for more families, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.
- (b) Group Care Residence, unless otherwise allowed pursuant to paragraph 2(c) of this section.
- (c) Light Manufacturing Uses, except as allowed in Section 39-12.2(a); kennel or pound.
- (d) Parking lot or parking garage, except as allowed under paragraph 2(o) or paragraph 2(p) of this section.

- (e) Wholesale Uses. Limited to: accessory storage (other than of flammable liquids, gases, and explosives) in roofed structures or office or display or sales space of a wholesale, jobbing, or distributing house where more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (f) Fast Food Restaurant Uses. Limited to: sale over the counter, not wholly incidental to a use listed under paragraph 2(a), 2(d), or 2(m) of this section, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
- (g) Rental motor vehicle and trailer agency accessory to a hotel or motel, provided that no rental vehicles or trailers are parked on the street and that exterior lighting is arranged to shine downward and away from residences.
- (h) The change of use of any residence to another use.
- (i) Transportation Uses. Limited to bus terminal, bus station, subway station or railroad passenger station, airline shuttle service.
- (j) Ancillary Uses. Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.
- (k) Institutional Uses. Limited to: college or university granting degrees by authority of the Commonwealth; fraternity or sorority house or dormitory; trade, professional, or other school; penal or correctional institution; detention home; machine shop or other noisy activity accessory to a school, college, or university, adequately sound-insulated to protect the neighborhood from unnecessary noise; library or museum not conducted for profit and accessory to another institutional use not allowed pursuant to paragraph 2(n) of this section; clinic not accessory to a main use.
- (l) Service Uses. Check cashing business.
- (m) Accessory Uses. Limited to: a garage or parking space for occupants, employees, customers, students, and visitors, such use

not accessory to a residential use, a hotel or motel, or a group care residence.

- (n) Open space recreational building, as described in Use Item No. 27A of Table A of Section 8-7.

- 4. Forbidden Uses. No land or structure in the North Station EDA shall be erected, used, or arranged or designed to be used, in whole or in part, for any use specified in the Use Item column of Table A of Section 8-7 if such use is not specified in Sections 39-12.2 and 39-12.3 as an allowed or conditional use, except for such uses as may be allowed to be continued as nonconforming uses under the provisions of Article 9.

(↑As amended on February 22, 1991, September 30, 1993, October 6, 1994, and September 20 and November 21, 1996.)

↓SECTION 39-13. **Specific Design Requirements.** Proposed Projects within the North Station EDA shall comply with the specific design requirements established in this section. Except as provided in Article 6A, no Zoning Relief shall be granted from the provisions of this section. See Section 80C-9 (Planned Development Area Review: Effect on Applicability of Other Zoning Requirements) and Section 39-8.2 (PDAs: Use and Dimensional Regulations) concerning the applicability of the provisions of this section to Proposed Projects in Planned Development Areas.

- 1. Street Wall Continuity. The Street Wall of any Proposed Project shall be built:
 - (a) to be coextensive with at least eighty percent (80%) of the "Existing Building Alignment" of the block on which the Proposed Project fronts, established pursuant to Section 18-2 of this code; or
 - (b) to a depth from the street line equal to that of at least eighty percent (80%) of the Existing Building Alignment of either block adjacent to the block on which the Proposed Project is located, if there is no Existing Building Alignment of such block.

Recess Above Display Window Area Street Wall*

<u>Maximum Depth</u>	<u>Maximum Aggregate Surface Area</u>
Fifteen (15) feet	Twenty percent (20%)

*Recesses do not include windows, which must be indented.

2. Street Wall Height. The "Street Wall Height" of Proposed Projects within the North Station Economic Development Area shall not exceed one hundred twenty-five (125) feet. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 39-13.
3. Setback Requirements.
 - (a) Sky Plane Setbacks. Other than decorative cornices and other surface ornamentation, every portion of a Proposed Project (including, but not limited to, mechanical equipment) above the Street Wall Height of such Proposed Project shall be set back by not less than the amount of the "Sky Plane Setbacks" established in Table C for the Street Wall Heights and building heights of three hundred (300) feet. Portions of a Proposed Project more than one hundred seventy-five (175) feet in height above grade level should be treated in a manner to create a visually distinctive roof or other termination of the facade of the Proposed Project.

The amount of the Sky Plane Setback at various heights for each wall of a building depends on whether the particular wall faces on a street identified below in Table B. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 39-13.

TABLE B

Streets on Which Setbacks are Required

Causeway Street
Lowell Street

New Nashua Street
North Washington Street

TABLE C

Sky Plane Setbacks
Minimum Depth of Setback from Street Wall

<u>Location</u>	<u>Above Street Wall Height</u>	<u>Above 300' (Total Setback From Street Wall)</u>
Causeway Street*	40'	40'
Lowell Street	15'	15'
New Nashua Street*	35'	50'
North Washington Street	15'	50'

- * Above the Street Wall Height, the Sky Plane Setbacks of separate portions of buildings along the same street may be averaged, to avoid repetitive tower distances from the Street Wall, so long as a minimum Sky Plane Setback of twenty-five (25) feet is maintained for portions of each building exceeding the Street Wall Height.

The Sky Plane Setback provisions established in this paragraph shall not be applicable to the extent that, as a consequence of such provisions, the maximum possible gross floor area for any floor of a Proposed Project would be less than nine thousand (9,000) square feet.

- (b) The principal facade of a building may violate the setback requirements up to the one hundred seventy-five (175) foot level, up to a maximum of 35 feet horizontal dimension or one bay or thirty percent (30%) of total horizontal length of the principal facade, whichever is greater.

(↑ As amended on July 31, 1997.)

SECTION 39-14. Riverfront Setback Area. No structure shall be erected, altered, or extended within thirty-five (35) feet of the existing mean high water mark of the Charles River.

↑ **SECTION 39-15. North Station Central Artery Open Space Subdistrict.** The area within the North Station Economic Development Area depicted on Map 1B of this code as OS-A, the "North Station Central Artery Open Space Subdistrict," is an Air-Right open space subdistrict, subject to the regulations set forth in Section 33-16.

(↑ As amended on July 31, 1997.)

↑SECTION 39-16. **Off-Street Loading.** Article 24 governs the provision and design of off-street loading facilities for the use of any structure or land not subject to the provisions of Large Project Review. The provision and design of off-street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review.

(↑As amended on May 9, 1996.)

SECTION 39-17. **Regulations.** The Boston Redevelopment Authority may promulgate and from time to time amend regulations to administer this article.

SECTION 39-18. **Severability.** The provisions of this article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.

APPENDIX B to ARTICLE 39

Definitions

For the purposes of this article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 39-4, or the authorized agent of any such person or entity.
2. ["Development Plan"]. Deleted on May 9, 1996 by Text Amendment No. 228.
3. "North Station Economic Development Area Plan" means the comprehensive plan, adopted by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952 and Section 27D-18 of this code, which sets forth the planning policies, development controls, and design guidelines for the North Station Economic Development Area.
- ↑4. "North Station Economic Development Area" means the area depicted on Map 1B of this code.

(↑As amended on July 31, 1997.)
5. "Proposed Project" means the substantial demolition, erection, or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit. A Proposed Project may proceed in phases, and may include more than one building, structure, or use.
6. "Street Wall" means the exterior wall or portion of the exterior wall of a Proposed Project that faces a street on which such Proposed Project is located, and is below the Street Wall Height, determined pursuant to Section 39-13.
7. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the last occupied floor of a Proposed Project shall not exceed the specified height limit for the applicable district or subdistrict by more than fifteen (15) feet.
8. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

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↑ARTICLE 40

SOUTH STATION ECONOMIC DEVELOPMENT AREA

(↑Article inserted on September 13, 1989*)

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* Date of public notice: August 12, 1989 (see St. 1956, c. 665, s. 5).

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Appendices:

Appendix A - Deleted [Map 1C, South Station EDA]
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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this article.)

SECTION 40-1. Statement of Purpose, Goals, and Objectives. The purpose of this article is to establish the zoning regulations for the comprehensive plan for the South Station Economic Development Area ("EDA") as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this code. The goals and objectives of this article, which constitutes the South Station EDA Plan, are to direct downtown development in a way that promotes balanced growth for Boston; to channel growth away from congested areas and toward underutilized sites in the Bedford-Essex corridor and along the Fort Point Channel; to permit redevelopment which provides significant community benefits, in accordance with city land disposition policies; to create a mixed-use district which includes office, retail, hotel, research and development, and biomedical uses; to provide an area of the downtown to enhance the expansion of Boston's biomedical and research and development sectors; to create a complex of facilities and services which will foster economic growth in Boston and throughout the region; to increase the number of jobs in those sectors of the economy likely to employ Boston residents; to promote the creation and incubation of new research and development businesses and uses along with facilities supporting such uses; to create a transition of uses and character between the downtown and Chinatown and Leather Districts; to utilize existing transit centers; and to improve vehicular access to the city by establishing parking facilities near major commuter arteries.

SECTION 40-2. Recognition of the South Station Economic Development Area Plan. In accordance with Section 27D-18 of this code, which requires production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the South Station area (Special Study Area No. 10), this article serves as the South Station EDA Plan. The Zoning Commission hereby recognizes this article (approved by the Boston Redevelopment Authority on June 29, 1989) as the South Station EDA Plan and also as the general plan for the South Station EDA and as the portion of the general plan for the City of Boston applicable to the South Station EDA. The preparation of the South Station EDA Plan by the Boston Redevelopment Authority is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

↑**SECTION 40-3. Physical Boundaries.** The provisions of this article are applicable only in the South Station EDA. The boundaries of the South Station EDA and Leather District are as shown on a map entitled, "Map 1C South Station Economic Development Area (supplemental to 'Map 1 Boston Proper')" of the series of maps entitled "Zoning Districts City of Boston," as amended.

(↑As amended on July 31, 1997.)

SECTION 40-4. Applicability. This article together with the rest of this code constitutes the zoning regulation for the South Station EDA and applies as specified in Section 4-1 regarding the conformity of buildings and land to this code. Application of

the provisions of Article 27D to the South Station EDA is rescinded, and the South Station EDA is deleted from the Downtown Interim Planning Overlay District on the effective date of this article. Where conflicts between this article and the rest of this code exist, the provisions of this article shall govern. Except where specifically indicated in this article, the provisions of this article supersede Sections 13-1, 13-2, and 13-4 and Articles 8 and 14 through 24 of this code for the South Station EDA. The provisions of this article, however, are not applicable to the following Proposed Projects, which are governed by the rest of this code.

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the commission for adoption of this article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the commission for adoption of this article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

↓SECTION 40-4A. **South Station/Central Artery Area.** Notwithstanding any contrary provision of this Article, the South Station/Central Artery Area shall be governed by the applicable use, dimensional, and other requirements of Article 49, Central Artery Special District. In particular, the provisions of Sections 40-5 and 40-12 through 40-14 shall not be applicable to the South Station/Central Artery Area. The Central Artery Special District Plan, as that term is defined in Article 49, shall be part of the general plan for the South Station EDA as it applies to the South Station/Central Artery Area.

(↓As inserted on June 7, 1991)

SECTION 40-5. **General Building Height and Floor Area Ratio.** Except in the Parcel-to-Parcel Linkage Development Area and the New Economy Development Area, as provided in following sections, a Proposed Project within the South Station EDA is allowed an as-of-right building height of three hundred (300) feet and an as-of-right FAR of twelve (12).

↓SECTION 40-6. **Building Height and FAR in the Parcel-to-Parcel Linkage Development Area.** Within that portion of the South Station EDA depicted on Map 1C of this code as the "Parcel-to-Parcel Linkage Development Area," a Proposed Project is allowed an as-of-right building height of four hundred sixty-five (465) feet and an as-of-right FAR of fourteen (14).

(↓As amended on July 31, 1997.)

↑SECTION 40-7. **Building Height and FAR in the New Economy**

Development Area. Within that portion of the South Station EDA depicted on Map 1C of this code as the "New Economy Development Area," a Proposed Project is allowed an as-of-right building height of three hundred (300) feet and an as-of-right FAR of twelve (12); provided that any Proposed Project shall have an as-of-right building height of four hundred (400) feet and FAR of fourteen (14) if a Development Plan for such Proposed Project has been approved pursuant to Section 3-1A.a and Planned Development Area Review.

(↑As amended on May 9, 1996 and July 31, 1997.)

↑SECTION 40-8. **Establishment of Areas Within Which Planned Development Areas May Be Permitted.**

1. PDA Permitted Areas; Review and Approval Requirements. PDAs, as described in Section 3-1A.a, may be established in the Parcel-to-Parcel Linkage Development Area and the New Economy Development Area. The purposes for establishment of PDAs are to establish a more flexible zoning law and encourage large-scale private development on underutilized sites in the South Station EDA. No PDA is permitted within the South Station EDA except within the Parcel-to-Parcel Linkage Development Area and the New Economy Development Area. See Article 80 concerning the applicability of Planned Development Area Review.
2. Planned Development Areas: Use and Dimensional Regulations. A Proposed Project described in a Development Plan shall be in Substantial Accord with the dimensional standards set forth in Section 40-6 (for the Parcel-to-Parcel Linkage Development Area) or 40-7 (for the New Economy Development Area), as applicable. Except where specifically indicated in this article, Section 40-13 (Specific Design Requirements) shall not apply to a Proposed Project described in a Development Plan.

For applicable use regulations, see Section 40-12 (South Station Economic Development Area Use Regulations).

(↑As amended on May 9, 1996 and July 31, 1997.)

SECTION 40-9. [Applicability of Future Amendments.] Deleted on May 9, 1996 by Text Amendment No. 228.

↑SECTION 40-10. **Planned Development Areas: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(↑ As amended on May 9, 1996 and July 31, 1997.)

↑ SECTION 40-11. **Planned Development Areas: Planning and Development Criteria.** The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this article if the Development Plan proposes a plan for development consistent with the goals of the South Station EDA Plan, including one or more of the following: (a) the diversification and expansion of Boston's economy in new areas of economic activity, such as private investment in the research and development of pharmaceutical and biomedical products, in accordance with the provisions of paragraph 1, below, of this section; (b) the provision of public benefits in accordance with Parcel-to-Parcel Linkage program guidelines, in accordance with the provisions of paragraph 2, below, of this section; or (c) the creation or retention of job opportunities, in accordance with the provisions of paragraph 3, below, of this section.

1. Development Plan Approval for Diversification and Expansion of Boston's Economy. The Boston Redevelopment Authority may approve a Development Plan proposing diversification and expansion of Boston's economy if at least fifty percent (50%) of the gross floor area of the Proposed Project is dedicated to or supportive of uses such as, but not limited to, the following: (a) research and development of pharmaceutical and biomedical products; (b) the design, development, fabricating, and testing of instruments for engineering, medical, dental, scientific, optical, or other similar professional use; or (c) other scientific research and development uses, including laboratories and facilities for theoretical, basic, and applied research, product development and testing, prototype fabrication, or production of experimental products prior to preclinical testing. Examples of uses which shall be considered "supportive of" the uses enumerated in subparagraphs (a), (b) and (c) above include, but are not limited to: office space occupied by private entities engaged in such uses, or occupied by governmental entities regulating such uses; hotel, conference, or convention facilities; and educational facilities providing instruction in fields related to such uses.
2. Development Plan Approval for the Provision of Public Benefits in Accordance with Parcel-to-Parcel Linkage Program Guidelines. The Boston Redevelopment Authority may approve a Development Plan proposing provision of public benefits in accordance with Parcel-to-Parcel Linkage program guidelines if: (a) the program guidelines have been approved by the Boston Redevelopment Authority for a site for which the Boston Redevelopment Authority has recommended the tentative designation of a developer, in accordance with the Boston Redevelopment Authority's administrative practice; (b) the program guidelines provide for the participation of community-based organizations in the development;

(c) the Proposed Project or the Applicant contributes to a community development fund; and (d) the Applicant provides such other community benefits as may be detailed in the Parcel-to-Parcel Linkage program guidelines, as amended from time to time and as affected by agreements between the Boston Redevelopment Authority and the Applicant.

3. Development Plan Approval for the Creation or Retention of Job Opportunities. The Boston Redevelopment Authority may approve a Development Plan proposing creation or retention of job opportunities if it determines that: (a) employment positions in businesses occupying the Proposed Project are newly created in Boston, and are not relocated from other parts of the city; (b) the Development Plan provides for entrepreneurial assistance measures, such as (i) information, outreach, and education programs concerning new business development; (ii) general business planning and management counseling; (iii) technical assistance; and (iv) the establishment of general financing options; or (c) the use proposed will retain jobs in the city or will contribute otherwise to the economic health of the city, from the Development Plan's showing that at least thirty-three percent (33%) of the gross floor area of the Proposed Project will be leased or used by entities identified in the Development Plan.

(↑ As amended on May 9, 1996.)

↑ SECTION 40-12. **South Station Economic Development Area Use**

Regulations. In the South Station EDA, the use of land and structures is hereby regulated as provided in this section. The provisions of Article 8 apply only as specified in this section, except that Section 8-6 applies. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 40-12, or in conformity with the provisions of an approved Development Plan with respect to land or structures located in a PDA.

1. Inclusion of Day Care Facilities. The provisions of this paragraph apply only to Proposed Projects which exceed one hundred thousand (100,000) square feet of gross floor area. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, which equals or exceeds one hundred thousand (100,000) square feet shall devote to day care facilities an amount of floor area equal to the amount listed below in Table A of this section. An Applicant for a Proposed Project subject to the provisions of this paragraph may fulfill its obligations under this paragraph by (a) creating such facilities on-site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project, within the South Station Economic Development Area, the Leather District, or Chinatown. Except for Proposed Projects in the

Parcel-to-Parcel Linkage Development Area, any Proposed Project subject to the provisions of this section shall devote to on-site day care facilities, of the total amount required to be provided pursuant to Table A, an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this paragraph shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE A

Provision of Day Care Facilities

<u>Size of Proposed Project (Gross Square Feet)</u>	<u>Minimum Day Care Facilities (Gross Square Feet)</u>
100,000 up to 200,000	2% of gross floor area
200,000 up to 500,000	4,000
500,000 up to 1,000,000	8,000
More than 1,000,000	12,000

2. Allowed Uses. No land or structure in the South Station EDA shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except under the provisions of an approved Development Plan for land or structures in a PDA, or Section 40-12.3 and Article 6, Conditional Uses, unless such use is specified in the Development Plan or in this Section 40-12.2. Any use so specified below shall be allowed as a matter of right, subject only to the provisions of this Section 40-12 or, in the case of a PDA, the approved Development Plan.
 - (a) New Economy Uses. Limited to: basic research; research and development; product development or prototype manufacturing; biomedical technology; pharmaceutical research and development; research and medical laboratories.
 - (b) Residential Uses. Limited to: multifamily dwelling, artists' live/work space, apartment house, lodging or boarding house, temporary housing shelters, group residence, limited, as defined in clause (22B) of Section 2-1, and any dwelling converted for more families, where structures after conversion will conform to this code. Residential uses include any affordable dwelling units, including but not limited to

affordable dwelling units which are rental units, condominiums, or limited equity share cooperatives.

- (c) Restaurant and Entertainment Uses. Limited to: the service or sale of food or drink for on-premises consumption, with or without dancing or entertainment; concert hall; theater, commercial or nonprofit (including motion picture or video theater, but not drive-in theater); art galleries, nonprofit or for profit; provided that uses described in Use Item 38A are forbidden.
- (d) Office Uses. Limited to: offices of community groups; business or professional offices; real estate, insurance, or other agency or government office; office building; post office; or bank (other than drive-in bank) or similar establishment. (See also paragraph 2(m) of this section.)
- (e) Hotel or motel.
- (f) Deleted on February 22, 1991.
- (g) Day care center, family care center, nursery school, kindergarten, elementary or secondary school, or community health center or clinic.
- (h) Recreational and Community Uses. Limited to: private grounds for games and sports; other social, recreational, or sports center conducted for profit; private club (including quarters of fraternal or sororal organizations) operated for members only; adult education center or community center building; settlement house; the maintenance and operation of any amusement game machine in a private club, dormitory, fraternity, or sorority house, or similar noncommercial establishment, or in any commercial establishment.
- (i) Public Service Uses. Limited to: public service pumping station, sub-station, or automatic telephone exchange, subject to St. 1956, c. 665, s. 2.
- (j) Wholesale Uses. Limited to: office or display or sales space of a wholesale, jobbing, or distributing house; provided that not more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (k) Service Uses. Limited to: video or film production studio; barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop; framer's studio; caterer's establishment;

photographer's studio; printing plant; taxidermist's shop; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; funeral home; undertaker's establishment; mortuary; research laboratory; radio or television studio; animal hospital or clinic; or similar use; provided that in laundries and cleaning establishments, only nonflammable solvents are used for cleaning.

- (l) Retail Uses. Limited to: store primarily serving the local retail business needs of the neighborhood; artist supply store; grocery store; department store, furniture store, general merchandise mart or other store serving the general retail business needs of a major part of the city, including accessory storage; provided that uses described in Use Item 34A are forbidden.
- (m) Institutional Uses. Limited to: college or university granting degrees by authority of the Commonwealth; place of worship, monastery, convent, or parish house; nonprofit library or museum, not accessory to another institutional use; clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, provided that such use will occupy interior space being used by the same institution for another institutional use at the time such change is proposed; hospital, sanatorium, convalescent or nursing home, elderly care facility, orphanage, or similar institution not for correctional purposes, whether or not providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; research laboratory.
- (n) Accessory Uses subject to the limitations and restrictions of Article 10, limited to: conference facilities; auditoria; classrooms; a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use under paragraph 2(b) of this section, a hotel or motel, or a group care residence under paragraph 2(g) of this section; a swimming pool or tennis court; the storage of flammable liquids and gases incidental to a lawful use; the manufacture, assembly, or packaging of products sold on the lot; the maintenance and operation of not more than four amusement game machines accessory to eating and drinking establishments; the keeping of animals, other than households pets, provided that every enclosure is sufficient to prevent a nuisance to any adjacent residences or eleemosynary institutions; the keeping of laboratory animals incidental to a conditional institutional use, provided that all resulting noise, dust, fumes, gases, odors, and

refuse matter are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to public health or safety; in educational institutions with more than four hundred (400) full-time students, and in hospitals with more than fifty (50) beds, incidental uses and services ordinarily found in connection therewith and primarily for the patients and staff or students and faculty, when conducted wholly within a building and entered solely from within the building where there is but one building on the lot or from an entrance not directly facing a street or lot line where there is more than one building on a lot, unless accessory to a hospital or sanatorium or clinic which is an allowed use; and any use ancillary to, and ordinarily incident to, a lawful main use, provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory.

- (o) For land or structures in a PDA, uses specified in an approved Development Plan, including a parking lot or parking garage or other parking space, whether or not accessory, which would otherwise be a conditionally permitted use under Sections 40-12.3(d) and 40-12.3(m).
3. Conditional Uses. No land or structure in the South Station EDA shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Section 40-12.3. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the regulations set forth in this Section 40-12, or may be allowed by the Zoning Commission in its approval of a Development Plan for a PDA. The continued right to a conditional use granted under Article 6 is dependent upon maintaining the character and extent of operations and structures.
- (a) Residential Uses. Limited to: temporary dwelling structure, orphanage, and any dwelling converted for more families, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.
 - (b) Group Care Residence, unless otherwise allowed pursuant to paragraph 2(b).of this section.
 - (c) Light Manufacturing Uses, except as allowed in Section 40-12.2(a); kennel or pound.
 - (d) Parking lot or parking garage.

- (e) Wholesale Uses. Limited to: accessory storage (other than of flammable liquids, gases, and explosives) in roofed structures or office or display or sales space of a wholesale, jobbing, or distributing house where more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (f) Fast Food Restaurant Uses. Limited to: sale over the counter, not wholly incidental to a use listed under paragraph 2(a), 2(c), or 2(l) of this section, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
- (g) Rental motor vehicle and trailer agency accessory to a hotel or motel, provided that no rental vehicles or trailers are parked on the street and that exterior lighting is arranged to shine downward and away from residences.
- (h) The change of use of any residence to another use.
- (i) Transportation Uses. Limited to: bus terminal, bus station, subway station or railroad passenger station, airline shuttle service.
- (j) Ancillary Uses. Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.
- (k) Institutional Uses. Limited to: fraternity or sorority house or dormitory; trade, professional, or other school; penal or correctional institution; detention home; machine shop or other noisy activity accessory to a school, college, or university, adequately sound-insulated to protect the neighborhood from unnecessary noise; library or museum not conducted for profit and accessory to another institutional use not allowed pursuant to paragraph 2(m) of this section; clinic not accessory to a main use.
- (l) Service Uses. Check cashing business.
- (m) Accessory Uses. Limited to: a garage or parking space for occupants, employees, customers, students, and visitors, such use not accessory to a residential use, a hotel or motel, a group care residence, or a dormitory, fraternity, or sorority house.

4. Forbidden Uses. No land or structure in the South Station EDA shall be erected, used, or arranged or designed to be used, in whole or in part, for any use specified in the Use Item column of Table A of Section 8-7 if such use is not specified in Sections 40-12.2 or 40-12.3 as an allowed or conditional use, except for such uses as may be allowed to be continued as nonconforming uses under the provisions of Article 9.

(↑As amended on February 22, 1991, September 30, 1993, October 6, 1994, and September 20 and November 21, 1996.)

↓SECTION 40-13. **Specific Design Requirements.** Proposed Projects within the South Station EDA shall comply with the specific design requirements established in this section. Except as provided in Article 6A, no Zoning Relief shall be granted from the provisions of this section. See Section 80C-9 (Planned Development Area Review: Effect on Applicability of Other Zoning Requirements) and Section 40-8.2 (PDAs: Use and Dimensional Regulations) concerning the applicability of the provisions of this section to Proposed Projects in Planned Development Areas.

1. Street Wall Continuity. The Street Wall of any Proposed Project shall be built:
 - (a) to be coextensive with at least eighty percent (80%) of the "Existing Building Alignment" of the block on which the Proposed Project fronts, established pursuant to Section 18-2 of this code; or
 - (b) to a depth from the street line equal to that of at least eighty percent (80%) of the Existing Building Alignment of either block adjacent to the block on which the Proposed Project is located, if there is no Existing Building Alignment of such block.

Recesses Above Second Story*

<u>Maximum Depth</u>	<u>Maximum Aggregate Surface Area</u>
Fifteen (15) feet	Twenty percent (20%)

*Recesses do not include windows, which must be indented.

2. Street Wall Height. The "Street Wall Height" of Proposed Projects within the South Station Economic Development Area shall not exceed one hundred twenty-five (125) feet, except as limited further: (a) along Essex and Lincoln Streets, the Street Wall Height shall not exceed seventy (70) feet; and (b) along Bedford and Kingston Streets, the Street Wall Height shall not exceed one hundred (100) feet. The endwall of a street which is

a cul-de-sac does not count as a Street Wall for the purposes of this Section 40-13.

3. Setback Requirements.

- (a) Sky Plane Setbacks. Other than decorative cornices and other surface ornamentation, every portion of a Proposed Project (including, but not limited to, mechanical equipment) above the Street Wall Height of such Proposed Project shall be set back by not less than the amount of the "Sky Plane Setbacks" established in Table C for the Street Wall Heights and building heights of one hundred fifty-five (155) feet and two hundred ninety-five (295) feet. Portions of a Proposed Project more than one hundred fifty-five (155) feet high should be treated in a manner to create a visually distinctive roof or other termination of the facade of the Proposed Project.

The amount of the Sky Plane Setback at various heights for each wall of a building depends on whether the particular wall faces on a street, as identified below in Table B, or on a side lot line. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 40-13.

TABLE B

Streets on Which Setbacks are Required

Atlantic Avenue	Kingston Street
Bedford Street	Lincoln Street
Essex Street	

TABLE C

Sky Plane Setbacks
Minimum Depth of Setback from Street Wall

<u>Street</u>	<u>Above Street Wall Height</u>	<u>Above 155' (Total Setback from Street Wall)</u>	<u>Above 295' (Total Setback from Street Wall)</u>
Atlantic Avenue	10'	20'	20'
Bedford Street	25'	50'	100'
Essex Street	5'	5'	15'
Kingston Street	35'	75'	125'
Lincoln Street	5'	5'	15'

The Sky Plane Setback provisions established in this paragraph shall not be applicable to the extent that, as a consequence of such provisions, the maximum possible gross floor area for any floor of a Proposed Project would be less than nine thousand (9,000) square feet.

- (b) The facade of a building may violate the setback requirements above the two hundred ninety-five (295) foot level, up to a maximum of sixty percent (60%) of total horizontal length of the facade.

(↑ As amended on July 31, 1997.)

↑SECTION 40-14. **Off-Street Loading.** Article 24 governs the provision and design of off-street loading facilities for the use of any structure or land not subject to the provisions of Large Project Review. The provision and design of off-street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review.

(↑ As amended on May 9, 1996.)

SECTION 40-15. **Regulations.** The Boston Redevelopment Authority may promulgate and from time to time amend regulations to administer this article.

SECTION 40-16. **Severability.** The provisions of this article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.

APPENDIX B to ARTICLE 40

Definitions

For the purposes of this article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 40-4, or the authorized agent of any such person or entity.
2. ["Development Plan"]. Deleted on May 9, 1996 by Text Amendment No. 228.
3. "Proposed Project" means the substantial demolition, erection, or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit. A Proposed Project may proceed in phases, and may include more than one building, structure, or use.
4. "South Station Economic Development Area Plan" means the comprehensive plan, adopted by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of this code, which sets forth the planning policies, development controls, and design guidelines for the South Station Economic Development Area.
- ↑5. "South Station Economic Development Area means the area depicted on Map 1C of this code.

(↑As amended on July 31, 1997.)
6. "Street Wall" means the exterior wall or portion of the exterior wall of a Proposed Project that faces a street on which such Proposed Project is located, and is below the Street Wall Height, determined pursuant to Section 40-13.
7. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the last occupied floor of a Proposed Project shall not exceed the specified height limit for the applicable district or subdistrict by more than fifteen (15) feet.
8. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

⇅ ARTICLE 41

HUNTINGTON AVENUE/PRUDENTIAL CENTER DISTRICT

(⇅ Article inserted on March 20, 1990*)

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* Date of public notice: February 10, 1990 (see St. 1956, c. 665, s. 5).

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this article.)

SECTION 41-1. Statement of Purpose, Goals, and Objectives. The purpose of this article is to establish the zoning regulations for the comprehensive plan for the Huntington Avenue/Prudential Center District as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this code. The goals and objectives of this article and the Huntington Avenue/ Prudential Center District Plan are: to preserve the historic and architectural character of the historic residential neighborhoods included in the district; to realize the potential of Huntington Avenue as an important city boulevard and as a transitional boundary between the large-scale Prudential Center and the historic St. Botolph Street and South End neighborhoods; to encourage the private redevelopment of the Prudential Center; to integrate more effectively the Prudential Center with adjacent districts; to promote development that emphasizes a sense of human scale through appropriate block and building sizes and shapes, modulated and detailed facades and storefronts, and articulated entryways; to increase pedestrian activity along the streets surrounding the Prudential Center by promoting streetscape improvements, requiring active ground-level uses, and permitting the creation of a mixed-use economy, including office, retail, commercial, and residential uses; and to promote the public welfare of the people of Boston.

SECTION 41-2. Recognition of the Huntington Avenue/Prudential District Center Plan. In accordance with Section 27D-18 of this code, which required production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including Huntington Avenue/Prudential Center (Special Study Area No. 1), the Zoning Commission hereby recognizes the Huntington Avenue/Prudential Center District Plan as the general plan for the Huntington Avenue/Prudential Center District. The Huntington Avenue/Prudential Center District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Huntington Avenue/ Prudential Center District. This article is one of the means of implementing the Huntington Avenue/Prudential Center District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

↓**SECTION 41-3. Physical Boundaries.** The provisions of this article are applicable only in the Huntington Avenue/Prudential Center District. The boundaries of the Huntington Avenue/Prudential Center District are as shown on the map entitled, "Map 1D Huntington Avenue/Prudential Center District (supplemental to 'Map 1 Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston" as amended.

(↓As amended on July 31, 1997.)

SECTION 41-4. Applicability. This article together with the rest of this code constitutes the zoning regulation for the Huntington Avenue/Prudential Center District and applies as specified in Section 4-1 regarding the conformity of buildings and land to this code. Zoning Relief in the form of exceptions to the provisions of this article pursuant to Article 6A is not available, except to the extent expressly provided in this

article or Article 6A. Application of the provisions of Article 27D to the Huntington Avenue/Prudential Center District is rescinded, and the Huntington Avenue/Prudential Center District is deleted from the Downtown Interim Planning Overlay District as of the effective date of this article, except as provided below. Where conflicts between this article and the rest of this code exist, the provisions of this article shall govern. Except where specifically indicated in this article, the provisions of this article supersede Sections 13-1, 13-2, and 13-4 and Articles 8 and 14 through 24 of this code for the Huntington Avenue/Prudential Center District. However, the exclusions from building height limitations set forth in Section 16-2 are applicable to building height limitations established in this article, unless expressly otherwise provided. Further, the provisions of this article, are not applicable to the following Proposed Projects, which are governed by the rest of this code, including Article 27D:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

↓SECTION 41-5. **Establishment of Protection Areas.** This section establishes three "protection areas" within the Huntington Avenue/Prudential Center District. The three protection areas are established in order to protect public open spaces and residential neighborhoods within the protection areas, the concentration of historic buildings within the protection areas, and the existing human scale of buildings within the protection areas. The three protection areas are shown on Map 1D of this code, and are otherwise referred to herein, as "St. Botolph Street Protection Area," "St. Germain Street Protection Area," and "Massachusetts Avenue/Belvidere Street Protection Area." Any other provision of this article or this code notwithstanding, Proposed Projects within a protection area are limited to the as-of-right building height and floor area ratio ("FAR") specified for such protection area as follows:

1. St. Botolph Street Protection Area. Within that portion of the Huntington Avenue/Prudential Center District depicted on Map 1D of this code as the "St. Botolph Street Protection Area," an as-of-right building height of forty-five (45) feet and an as-of-right FAR of two (2) are allowed.
2. St. Germain Street Protection Area. Within that portion of the Huntington Avenue/Prudential Center District depicted on Map 1D of this code as the "St. Germain Street Protection Area," an as-of-right building height of forty-five (45) feet and an as-of-right FAR of two (2) are allowed.

3. Massachusetts Avenue/Belvidere Street Protection Area. Within that portion of the Huntington Avenue/Prudential Center District depicted on Map 1D of this code as the "Massachusetts Avenue/Belvidere Street Protection Area," an as-of-right building height of forty-five (45) feet and an as-of-right FAR of two (2) are allowed; provided that any Proposed Project is allowed an as-of-right building height of seventy-five (75) feet and an as-of-right FAR of four (4) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(↑ As amended on May 9, 1996 and July 31, 1997.)

SECTION 41-6. Rooftop Additions within Protection Areas. Each protection area in the Huntington Avenue/Prudential Center District shall constitute a Restricted Roof Structure District for the purposes of Section 16-8. Reference to the "maximum height specified in Table B of Section 13-1" shall be deemed to mean forty-five (45) feet. The restrictions set forth in Section 16-8 shall apply only to residential structures or structures originally built for residential use within said protection areas. In considering any appeal for a conditional use pursuant to this section and Section 16-8, the Board of Appeal shall consider whether a proposed roof structure is architecturally consistent with the distinctive historical and architectural character of the protection area. The Inspectional Services Department shall transmit a copy of any appeal for a conditional use pursuant to this section and Section 16-8 to the Boston Landmarks Commission. The Boston Landmarks Commission may, within thirty days after the date of such transmittal, file with the Board of Appeal a recommendation, provided that if no such recommendation is received within said thirty days, the Board of Appeal may render its decision without such recommendation.

↓ **SECTION 41-7. Establishment of Christian Science Institutional Area.** This section establishes the "Christian Science Institutional Area" within the Huntington Avenue/Prudential Center District. The area is shown on Map 1D of this code. In order to preserve the unique urban plan of the Christian Science Center, within the Christian Science Institutional Area an as-of-right building height of seventy-five (75) feet and an as-of-right FAR of two (2) are allowed, provided that any structure in existence as of the date of the first notice of hearing before the Zoning Commission for the adoption of this article and described in the urban renewal plan and land disposition agreement applicable to the Christian Science Institutional Area as of said date may be reconstructed in conformity with said plan and agreement in the event of fire or other casualty, notwithstanding any contrary provision of Section 13-3. Any Proposed Project that would encroach upon or diminish open spaces in existence in the Christian Science Institutional Area as of said date is subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component), notwithstanding any contrary provision of that section, unless such Proposed Project is subject to Large Project Review. In reviewing such a Proposed Project pursuant to

the Design Component of Small Project Review or the Urban Design Component of Large Project Review, the Boston Redevelopment Authority shall consider the impact of the Proposed Project on the unique urban design of buildings and open spaces of the Christian Science Institutional Area and other urban design considerations described in Section 80B-3.3, concerning the Urban Design Component of Large Project Review.

Pursuant to the provisions of Article 6A and this section, the Board of Appeal may grant an exception to the maximum permitted building height otherwise applicable to a Proposed Project within the Christian Science Institutional Area in the following manner. The Board of Appeal may grant such an exception for increased building height only if it finds that: (a) the Proposed Project and its massing are architecturally compatible with the surrounding area and with the unique urban plan of the Christian Science Center as described in the urban renewal plan and report and decision identified below, in accordance with the Design Component of Small Project Review or the Urban Design Component of Large Project Review as certified by the Director of the Boston Redevelopment Authority; (b) such an exception is in harmony with the general purpose and intent of this code; (c) the Proposed Project is consistent with the Huntington Avenue/Prudential Center District Plan and the general plan for the city as a whole; and (d) if such exception relates to a Development Impact Project as defined in Section 80B-7 (Development Impact Project Exactions), the Applicant shall have complied with the requirements set forth in said Section 80B-7, as applicable. The increased height available by exception is limited to 40 (forty) feet for a total building height of up to one hundred fifteen (115) feet. The procedure for granting such an exception shall be in accordance with the provisions of Section 6A-2, governing the granting of exceptions; provided that a four-fifths majority of the Boston Redevelopment Authority shall have recommended approval of the exception for increased height prior to the Board of Appeal's consideration of the application.

Reference is made to the fact that the entire Christian Science Institutional Area is included within the Symphony Sub-Area of the Fenway Urban Renewal Plan, Mass. R-115, as approved by City Council on December 20, 1965, as amended, which plan shall remain in full force and effect until December 20, 2005. Further, portions of the Christian Science Institutional Area are governed by the provisions of Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, pursuant to a Report and Decision by the Boston Redevelopment Authority filed on August 16, 1966, as amended, the controls of which will remain in full force and effect until August 16, 2006. Notwithstanding any contrary provision of this article, until such expiration dates, no change in the existing structures or open spaces requiring a building permit may proceed without a determination by the Boston Redevelopment Authority that such change is consistent with the said urban renewal plan and said Chapter 121A Report and Decision or a modification of that plan or report and decision, as applicable, by the Boston Redevelopment Authority after a public hearing and community review process.

(↑ As amended on May 9, 1996 and July 31, 1997.)

↓ **SECTION 41-8. Establishment of Huntington Avenue Boulevard Area.**

This section establishes the "Huntington Avenue Boulevard Area" within the Huntington Avenue/Prudential Center District. The Huntington Avenue Boulevard Area is established in order to promote the improvement of Huntington Avenue as an important urban boulevard, while creating a successful transition between the scale of Huntington Avenue and the historic and architectural character of the St. Botolph Street neighborhood. The area is shown on Map 1D of this code. Within the Huntington Avenue Boulevard Area, an as-of-right building height of one hundred fifteen (115) feet and FAR of eight (8) are allowed. Special side and rear yard requirements apply within the Huntington Avenue Boulevard Area as provided in Subsections 41-18.4(d) and 41-18.4(e).

(↑ As amended on July 31, 1997.)

↓ **SECTION 41-9. St. Cecilia Special Study Area.** This section establishes the

"St. Cecilia Special Study Area" within the Huntington Avenue/Prudential Center District. The area is shown on Map 1D of this code. Within the St. Cecilia Special Study Area, an as-of-right building height of sixty-five (65) feet and FAR of four (4) are allowed; provided that any Proposed Project is allowed an as-of-right building height of one hundred (100) feet and an FAR of seven (7) if such Proposed Project is subject to or elects to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6. In accordance with the Huntington Avenue/Prudential Center District Plan, a comprehensive plan for the St. Cecilia Special Study Area shall be developed and shall address, at a minimum, the following: (a) appropriate means to preserve and encourage the rehabilitation and restoration of the notable historic buildings which characterize the St. Cecilia Special Study Area; (b) appropriate means to encourage the creation of housing, including Affordable housing; (c) an open space plan for appropriate portions of the St. Cecilia Special Study Area; (d) appropriate means to encourage a mix of retail uses serving neighborhood needs; (e) appropriate means to ensure a human scale in the design of new development in the St. Cecilia Special Study Area; (f) the appropriate mix of land uses to accomplish these objectives; and (g) land use regulations necessary to implement the comprehensive plan's proposals.

(↑ As amended on May 9, 1996 and July 31, 1997.)

SECTION 41-10. As-of-Right Building Height and Floor Area Ratio. Except as otherwise may be allowed within a Planned Development Area ("PDA") established in accordance with Section 41-11 and Section 3-1A of this code and except as otherwise provided in Section 41-5, pertaining to protection areas, Section 41-7, pertaining to the Christian Science Institutional Area, Section 41-8, pertaining to the Huntington Avenue Boulevard Area, and Section 41-9, pertaining to the St. Cecilia Special Study Area, a Proposed Project within the Huntington Avenue/Prudential

Center District is allowed an as-of-right building height of one hundred fifty-five (155) feet and an as-of-right FAR of ten (10).

↓ **SECTION 41-11. Establishment of Area Within Which Planned Development Areas May Be Permitted.** This section establishes one area within which Planned Development Areas ("PDAs") may be permitted within the Huntington Avenue/ Prudential Center District. The purposes for establishment of the area within which PDAs may be permitted are: to establish a more flexible zoning law and encourage large-scale private redevelopment of the obsolete Prudential Center while insuring high-quality design by providing planning and design controls; to provide a secure economic base for the Back Bay hotel, convention, and hospitality economy; and to encourage development which knits together the surrounding neighborhoods through a new urban design for the Prudential Center.

1. Consistency with Section 3-1A; Review and Approval Requirements. The area in the Huntington Avenue/Prudential Center District within which PDAs may be permitted is shown on Map 1D of this code, and is otherwise referred to herein, as the "PDA Area." No PDA is permitted within the Huntington Avenue/Prudential Center District except within the PDA Area. Any application for Development Plan approval for a Proposed Project within the PDA Area is subject to the provisions of this section and Sections 41-12 through 41-16, in addition to the provisions of Subsection 3-1A.a. See Article 80 concerning the applicability of Planned Development Area Review.
2. Reconstruction of Pre-existing Structures. A Proposed Project for the reconstruction of a structure in existence in a PDA as of the date of Development Plan approval and described in said Development Plan, or of a structure constructed pursuant to said Development Plan, shall be determined by the Boston Redevelopment Authority to be consistent with said Development Plan, provided that said reconstruction is substantially similar to the original structure. Said reconstruction, unless described as part of the original Proposed Project in said Development Plan, shall constitute a separate Proposed Project for all purposes hereunder.
3. Transition Provision. Where a boundary line of the Huntington Avenue/Prudential Center District divides a lot in single ownership of record at the time the PDA is approved in accordance with this article and Subsection 3-1A.a of this code, the regulations set forth in this article as applicable to the PDA and the authorizations, requirements, terms, and conditions of said PDA approval, including the approved Development Plan, any Cooperation Agreement, Development Impact Project Agreement, and any other plan or agreement included in or providing the basis for such PDA approval, shall be deemed to be applicable to an area extending to so much of the remainder of said lot as is within 120 feet of said district

boundary line, except that the height and FAR provisions applicable within the PDA shall extend only to so much of the remainder of said lot as is within thirty (30) feet of said district boundary line.

(↑As amended on May 9, 1996 and July 31, 1997.)

SECTION 41-12. Planned Development Areas: Use and Dimensional Regulations. The land use and dimensional regulations for PDAs are established by this section.

1. Use Regulations. Proposed Projects within PDAs are subject to the use regulations set forth in Section 41-17.
2. Dimensional Regulations. Proposed Projects within a PDA shall be in Substantial Accord with the following FAR and building height standards: there shall be permitted a maximum FAR of six (6) and a maximum building height of one hundred fifty-five (155) feet, except that one (1) building only within the PDA shall be permitted a maximum building height of four hundred sixty-five (465) feet. For the purposes of this paragraph 2 of Section 41-12, FAR shall be computed as though the land within a PDA were in single ownership, notwithstanding actual ownership patterns or changes in ownership occurring after the approval of a Development Plan for the PDA and off-street parking as permitted in a Development Plan shall not be included in said FAR computation.

↑SECTION 41-13. **Planned Development Areas: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(↑As amended on May 9, 1996 and July 31, 1997.)

↑SECTION 41-14. **Planned Development Areas: Public Benefit Criteria.** The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this article if the Development Plan proposes a plan for public benefits, consistent with the Huntington Avenue/Prudential Center District Plan, including, at a minimum, each of the following: (a) the creation of Affordable housing in accordance with the provisions of paragraph 1, below, of this section, and (b) the provision of substantial street improvements in accordance with the provisions of paragraph 2, below, of this section.

1. Development Plan Approval for Creation of Affordable Housing. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or cause the construction of housing if: (a) at least

twenty percent (20%) of the gross floor area proposed to be newly constructed (as distinct from refurbished or rehabilitated) as part of the Proposed Project is devoted to Residential Uses; (b) either (i) at least ten percent (10%) of the new dwelling units proposed in the Development Plan on-site are Affordable; or (ii) the Applicant causes the creation, rehabilitation, or preservation of Affordable dwelling units off-site by making a dollar contribution to the Neighborhood Housing Trust, or another entity acceptable to the Boston Redevelopment Authority, of not less than an amount calculated by multiplying the total number of dwelling units to be constructed as part of the Proposed Project by 0.2 and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve months prior to the effective date of this article; and (c) a minimum of 0.7 off-street parking space is provided for each new on-site dwelling unit or, if a lesser number of spaces is permitted to be provided for such dwelling units pursuant to the terms of any applicable state or federal parking freeze or similar law, the greatest number of spaces permitted for such dwelling units under such parking freeze or similar law. On-site Affordable dwelling units shall be comparable in size, appearance, and quality to other dwelling units within the Proposed Project.

2. Development Plan Approval for the Provision of Street Improvements. The Boston Redevelopment Authority may approve a Development Plan providing, either directly or through funding, for substantial street improvements to streets adjacent to and in the vicinity of the PDA. Such street improvements must be consistent with any applicable street improvement regulations or guidelines and must be sufficient, as determined by the Boston Redevelopment Authority, to improve the appearance, condition, quality of design and materials, and accessibility and useability of the affected streets by pedestrians, taking into account increased vehicular and pedestrian flows.

(↑As amended on May 9, 1996.)

↑SECTION 41-15. **Planned Development Areas: Recommendations from Community Groups and City Departments.** See Section 80C-5.3 (BRA Procedures for PDA Review: Public Notice and Comment) concerning procedures for public notice and comment in the review of a Development Plan.

(↑As amended on May 9, 1996 and July 31, 1997.)

↑SECTION 41-16. **Planned Development Areas: General Design and Environmental Impact Standards.** In addition to the Large Project Review requirements set forth in Article 80 of this code, Proposed Projects submitted as part of an application for Development Plan approval under Planned Development Area

Review shall comply with the District general design and environmental impact standards described herein. Compliance with these additional standards shall be determined through Large Project Review. The purpose of these additional standards is to maintain and improve the quality of life in the Huntington Avenue/Prudential Center District.

1. Shadow Criteria. Each Proposed Project shall be arranged and designed in a way to assure that it does not cast shadows for more than two hours from 8:00 a.m. through 2:30 p.m., on any day from March 21 through September 21, in any calendar year, on any portion of dedicated public parkland that either
 - (a) is not cast in shadow during such period on such days by structures existing as of the effective date of this article or
 - (b) would not be cast in shadow during such period on such days by structures built to the as-of-right limits allowed by this article,

whichever structures cast the greater shadow. In addition, shadow studies shall be conducted in connection with any Proposed Project demonstrating that shadows will be minimized to the extent practicable in public open spaces created as part of the Proposed Project.

2. Wind. Buildings shall be designed to avoid excessive and uncomfortable downdrafts on pedestrians. Each Proposed Project shall be shaped, or other wind-baffling measures shall be adopted, so that the Proposed Project will not cause ground-level ambient wind speeds to exceed the standards in Table A of this section.

TABLE A

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity*</u>	<u>Permitted Annual Occurrence Frequency</u>
Limit for All Pedestrian Areas	13.8 m/sec (31 mph)	1%
Major Walkways - Especially Principal Egress Path for High-Rise Buildings	13.8 m/sec	1%
Other Pedestrian Walkways - Including Street and Arcade Shopping Areas	11.2 m/sec (25 mph)	5%
Open Plazas and Park Areas, Walking and Strolling Areas	6.3 m/sec (14.1 mph)	15%
Open Plaza and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

* The effective gust velocity (egv) is defined as $egv = U + 1.5 fvc$, where U is the mean windspeed at a particular location and fvc is the root mean square of the fluctuating velocity component measured at the same location over the same time interval.

3. Transportation Access. Each Proposed Project that is subject to Large Project Review shall be subject to a Transportation Access Plan providing for effective transportation access and mitigation measures designed to minimize adverse traffic impacts on the Huntington Avenue/Prudential Center District and surrounding neighborhoods and improve traffic flow and access within the affected area. Such Transportation Access Plan shall also provide for effective parking management measures to minimize adverse parking effects within the Huntington Avenue/Prudential Center District and surrounding neighborhoods.

4. Landmarks and Historic Buildings. Each Proposed Project shall generally be designed and arranged in such a way as to limit the reduction of light and air surrounding Landmarks and Historic Buildings and to minimize the shadow impact on their facades.
5. Enhancement of Pedestrian Environment. Each Proposed Project shall enhance the pedestrian environment, by means such as: (a) pedestrian pathways connecting to mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) materials, landscaping, public art, lighting, and furniture that enhance the pedestrian environment; (d) interior retail uses; (e) pedestrian systems that encourage more trips on foot; (f) sidewalk and street improvements that improve pedestrian flow and increase pedestrian safety on sidewalks and crosswalks; (g) other attributes that improve the pedestrian environment and pedestrian access to mass transit stations; (h) appropriate management and maintenance of public space within the Proposed Project; and (i) exterior or interior pedestrian passageways.
6. Boston Civic Design Commission Review. In addition to complying with the above standards, each Proposed Project shall be subject to review by the Boston Civic Design Commission, in accordance with the provisions of Article 28.

(↑As amended on May 9, 1996.)

↓SECTION 41-17. **Huntington Avenue/Prudential Center District Use Regulations**. In the Huntington Avenue/Prudential Center District, the use of land and structures is hereby regulated as provided in this section. The provisions of Article 8 apply only as specified in this section, except that Section 8-6 applies. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 41-17 or in conformity with the provisions of an approved Development Plan with respect to land or structures located in a PDA.

1. Special Use Areas. Any other provision of this article or this code notwithstanding, within the St. Botolph Street Protection Area and St. Germain Street Protection Area, Proposed Projects shall be limited to those uses indicated as follows:

(a) St. Botolph Street Protection Area

Allowed uses: residential uses identified in paragraph 4(a) of this section; uses accessory thereto identified in paragraph 4(q) of this section.

Conditional uses: residential uses identified in paragraph 5(a) of this section; uses accessory thereto identified in paragraph 5(k) of this section.

(b) St. Germain Street Protection Area

Allowed uses: residential uses identified in paragraph 4(a) of this section; uses accessory thereto identified in paragraph 4(q) of this section.

Conditional uses: residential uses identified in paragraph 5(a) of this section; uses accessory thereto identified in paragraph 5(k) of this section.

2. Inclusion of Day Care Facilities. The provisions of this paragraph 2 shall apply only to Proposed Projects exceeding a building height of one hundred fifteen (115) feet or an FAR of six (6) or both. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, which equals or exceeds one hundred thousand (100,000) square feet shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table B of this Section. For the purposes of this Subsection 41-17.2 and Table B only, floor area devoted exclusively to hotel or motel uses shall be multiplied by 0.5 before being used in any calculation of required day care facilities. An Applicant for a Proposed Project subject to the provisions of this paragraph may fulfill its obligations under this paragraph by either (a) creating such facilities on-site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project, within the Huntington Avenue/ Prudential Center District, the Back Bay neighborhood, or the South End neighborhood; provided that any Proposed Project subject to the provisions of this section shall devote to day care facilities located on-site an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this paragraph shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE B

Provision of Day Care Facilities

<u>Size of Proposed Project (Gross Square Feet)</u>	<u>Minimum Day Care Facilities (Gross Square Feet)</u>
100,000 up to 200,000	2% of gross floor area
200,000 up to 500,000	4,000
500,000 up to 1,000,000	8,000
More than 1,000,000	12,000

3. Ground Level Uses. Within a Proposed Project, uses with street frontage on Huntington Avenue, Massachusetts Avenue, or Boylston Street, either located on the ground level or entered by stairs from a sidewalk entry, are limited to Ground Level Uses, as listed in Appendix B to this article. A display window physically contiguous to a Ground Level Use or with exhibits or displays operated and maintained by an occupant of the building in which said window is located is allowed as a Ground Level Use. All other uses with street frontage which are allowed by this section are conditional uses when located on the ground level or entered by stairs from a sidewalk entry.

4. Allowed Uses. No land or structure in the Huntington Avenue/Prudential Center District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use not specified (a) in this Subsection 4, (b) in an approved Development Plan (except uses therein identified as conditional uses) for land or structures in a PDA, (c) in Subsection 5 of this Section 41-17 subject to the provisions of Article 6, or (d) in Subsections 1, 2, and 3 of this Section 41-17 subject to the limitations therein set forth. Any use so specified in this Subsection 4 shall be allowed as a matter of right, subject only to the provisions of this Section 41-17, including, without limitation, Subsections 1, 2, and 3 hereof, or, in the case of a PDA, the approved Development Plan.
 - (a) Residential Uses. Limited to: single-family, two-family, and multifamily dwellings, artists' live/work space, apartment house, lodging or boarding house, temporary housing shelters, group residence, limited, as defined in clause (22B) of Section 2-1, and any dwelling converted for more families where structures after conversion will conform to this code. Residential uses include any Affordable dwelling units, including but not limited to Affordable dwelling units

which are rental units, condominiums, or limited equity share cooperatives.

- (b) Restaurant and Entertainment Uses. Limited to: the service or sale of food or drink for on-premises consumption whether or not dancing or entertainment is provided; concert hall; theater, commercial or nonprofit (including motion picture or video theater, but not drive-in theater); art galleries, nonprofit or for profit; provided that the uses set forth in this paragraph (b) shall be conditional for any building (other than a building used primarily as a hotel or motel) that abuts or is located across an alley from a building located in the St. Botolph Street Protection Area or St. Germain Street Protection Area and provided further that uses described in Use Item No. 38A of Table A of Section 8-7 of this code are forbidden.
- (c) Office Uses. Limited to: offices of community service organizations; medical or dental offices; business or professional offices; offices of real estate, insurance, or other agency, institutional, or government office; office building; post office, or bank (including automatic teller machines but not including drive-in bank) or similar establishment.
- (d) Dance theater, or music rehearsal studio, artist studio or work space.
- (e) Hotel or motel.
- (f) Deleted on February 22, 1991.
- (g) Day care center, family care center, nursery school, kindergarten, elementary or secondary school, or community health center or clinic.
- (h) Recreational and Community Uses. Limited to: private grounds for games and sports; other social, recreational, or sports center conducted for profit; private club (not including quarters of fraternal or sororal organizations) operated for members only; adult education center or community center building; settlement house; the maintenance and operation of any amusement game machine in a private club, or similar noncommercial establishment.
- (i) Public Service Uses. Limited to: public service pumping station, sub-station, or automatic telephone exchange, subject to St. 1956, c. 665, s. 2.
- (j) Wholesale Uses. Limited to: office or display or sales space of a wholesale, jobbing, or distributing house; and provided that not more

than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.

- (k) Service Uses. Limited to: video or film production studio; barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop; framer's studio; caterer's establishment; photographer's studio; printing plant; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; key and lock shop; express mail operation and digs box; ticket outlet; funeral home; undertaker's establishment; mortuary; research laboratory; animal hospital or clinic; or similar use provided that in laundries and cleaning establishments, only nonflammable solvents are used for cleaning.
- (l) Retail Uses. Limited to: stores primarily serving the local retail business needs of the neighborhood; artist supply store; grocery store; department store, furniture store, general merchandise mart or other store serving the general retail business needs of a major part of the city, including accessory storage; provided that uses described in Use Item No. 34A are forbidden.
- (m) Uses specified in Appendix B hereto.
- (n) Institutional Uses. Limited to: place of worship, monastery, convent, or parish house; elderly care facility; nonprofit library or museum, not accessory to another institutional use; research laboratory.
- (o) Communications Uses. Limited to: radio and television studio; operation of fiber optic and other related communication equipment; telecommunication operation; data retrieval and transmission operation.
- (p) Urban Plazas. Limited to: passive and recreational uses accessible from adjoining streets, with facilities and structures appropriate to urban plazas, including benches and other seating facilities, pools, fountains, works of art, plantings, and other features.
- (q) Accessory Uses. Subject to the limitations and restrictions of Article 10, limited to: (i) a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use under paragraph 4(a) of this section, a hotel or motel, or a group care residence under paragraph 4(f) of this section; (ii) a swimming pool or tennis court; (iii) the storage of flammable liquids and gases incidental to a lawful use; (iv) the

manufacture, assembly, or packaging of products sold on the lot; (v) the maintenance and operation of not more than four amusement game machines accessory to eating and drinking establishments; (vi) the sale over the counter of on-premises prepared food or drink for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out, provided such sale is wholly incidental to a use listed under paragraph 4(b) or 4(l) of this section; (vii) or any use ancillary to, and ordinarily incident to, a lawful main use, provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory.

5. Conditional Uses. No land or structure in the Huntington Avenue/Prudential Center District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Subsection 5 or, within a PDA, is identified as a conditional use in the applicable Development Plan. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the requirements set forth in said article and this Section 41-18, or may be allowed by the Zoning Commission in its approval of a Development Plan for a PDA. The continued right to a conditional use is dependent upon maintaining the character and extent of operations and structures.

- (a) Residential Uses. Limited to: temporary dwelling structure, orphanage, dormitory, fraternity or sorority house, and any dwelling converted for more families, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.
- (b) Group Care Residence. Unless otherwise allowed pursuant to paragraph 4(a) of this section.
- (c) Light Manufacturing Uses (as identified in Subsection 36-4.1); kennel or pound.
- (d) Parking lot or parking garage.
- (e) Wholesale Uses. Limited to accessory storage (other than of flammable liquids, gases, and explosives) in roofed structures or office or display or sales space of a wholesale, jobbing, or distributing house where more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.

- (f) Fast Food Restaurant Uses. Limited to: sale over the counter, not wholly incidental to a use listed under paragraph 4(b) or 4(l) of this section, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
- (g) The change of use of any residence to another use.
- (h) Transportation Uses. Limited to bus terminal, bus station, subway station or railroad passenger station, airline shuttle service.
- (i) Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.
- (j) Institutional Uses. Limited to college or university granting degrees by authority of the Commonwealth; fraternity or sorority house or dormitory; trade, professional, or other school; penal or correctional institution; detention home; machine shop or other noisy activity accessory to a school, college, or university, adequately sound-insulated to protect the neighborhood from unnecessary noise; hospital, sanatorium, elderly care facility, orphanage, or similar institution not for correctional purposes, whether or not providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; library or museum not conducted for profit and accessory to another institutional use not allowed pursuant to paragraph 4(n) of this section; clinic not accessory to a main use.
- (k) Service Uses. Check cashing business.
- (l) Accessory Uses. Limited to: (i) a garage or parking space for occupants, employees, customers, students, and visitors, accessory to an allowed or conditional use, but not provided for under paragraph 4(q) of this section; (ii) clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, provided that such use will occupy interior space being used by the same institution for another institutional use at the time such change is proposed; (iii) clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot, providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; (iv) in hospitals with more than fifty (50) beds, incidental uses and services ordinarily found in connection therewith and

2. Street Wall Height. The Street Wall Height of Proposed Projects within the Huntington Avenue/Prudential Center District shall not exceed sixty-five (65) feet or the initial cornice height of the adjacent buildings, whichever is less, except that street walls facing Huntington Avenue shall be permitted a Street Wall Height not exceeding eighty (80) feet or the initial cornice heights of the adjacent buildings, whichever is less. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 41-18.
3. Display Window Area Regulations. The provisions of this subsection 3 apply only to Proposed Projects with gross floor areas of 50,000 square feet or more and only to Street Walls facing Massachusetts Avenue, Huntington Avenue, or Boylston Street. The Display Window Area, excluding any portion occupied by a permitted Lobby Entrance Area or entrance/exit to an off-street parking or loading area, shall be sufficiently and appropriately glazed and transparent, with sufficient individual storefront entrances, to encourage active pedestrian use, as certified by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review. Glazed portions of the Display Window Area, excluding storefront entrances and Lobby Entrance Areas, shall be used to a depth of at least two (2) feet for: (i) the display of goods and services available for purchase on the premises; or (ii) an area for exhibits and announcements. However, the provisions of the preceding sentence do not apply to foyer space for cultural uses, restaurants, or other active storefront uses.
4. Setback and Floorplate Requirements.
 - (a) Sky Plane Setbacks. Other than decorative cornices and other surface ornamentation, any portion of a Proposed Project (including, but not limited to, mechanical equipment), which portion faces a street listed in Table D of this article, shall be set back by not less than the amount of the "Sky Plane Setbacks" set forth in Table E of this article and applicable at the Street Wall Height and a building height of one hundred fifteen (115) feet. Portions of a Proposed Project more than one hundred fifty-five (155) feet high shall be treated in a manner to create a visually distinctive roof or other termination of the facade of the Proposed Project.

TABLE D

Streets on Which Sky Plane Setbacks are Required

Belvidere Street	Exeter Street
Boylston Street	Huntington Avenue
Dalton Street	Massachusetts Avenue
Dartmouth Street	Stuart Street

TABLE E

Sky Plane Setbacks

Minimum Depth of Setback from Street Wall

<u>Location</u>	<u>Above Street Wall Height</u>	<u>Above 115' (Total Minimum Setback From Street Wall)</u>
Street listed in Table D	5'	15'
PDA	5'	55'

The Sky Plane Setback provisions established in this paragraph are not applicable to the extent that, as a consequence of such provisions, the maximum possible gross floor area for any floor of a Proposed Project would be less than nine thousand (9,000) square feet.

- (b) Entrance Elements. In order to permit the creation of a distinctive entrance element, and notwithstanding any contrary provision of paragraph (a) of this Subsection 41-18.4, a portion of the front facade of a building may be built to the level of one hundred twenty-five (125) feet without setbacks provided that such portion has a maximum horizontal dimension of 35 feet or such other dimension as may be approved by the Boston Redevelopment Authority in Large

primarily for the patients and staff when conducted wholly within a building and entered from within the building where there is but one building on the lot line or from an entrance not directly facing a street or lot line where there is more than one building on a lot; (v) car wash, valet service, and automobile repair service accessory to a parking garage and located entirely within said parking garage; (vi) rental motor vehicle or trailer agency accessory to a hotel or motel, provided that no rental vehicles or trailers are parked on the street and that any exterior lighting is arranged to shine downward and away from residences.

6. Forbidden Uses. No land or structure in the Huntington Avenue/Prudential Center District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use specified in the use item column of Table A of Section 8-7 if such use is not specified in Subsections 1, 2, 3, 4, or 5 of this section as the case may be, as an allowed or conditional use, except for such nonconforming uses as may be allowed to be continued under the provisions of Article 9.

(↑As amended on February 22, 1991, September 30, 1993, October 6, 1994, and September 20 and November 21, 1996.)

↑SECTION 41-18. **Specific Design Requirements.** Except as otherwise expressly provided in this article or code, all Proposed Projects within the Huntington Avenue/Prudential Center District shall comply with the specific design requirements established in this section. The provisions of Article 6A shall be applicable to the provisions of this Section 41-18.

1. Street Wall Continuity. A Street Wall of any Proposed Project shall be built to be coextensive with the building line, as defined in clause 7A of Section 2-1, of the block on which the Street Wall faces. If there is no determinable building line of said block, then said Street Wall shall be built at a depth from the curb line equal to that of the building line farthest from the curb line of the two blocks adjacent to said block, facing onto the same street. If there is no determinable building line of either of said adjacent blocks, then (i) if the Proposed Project is subject to or elects to comply with Large Project Review, an appropriate Street Wall location shall be determined through such review or (ii) otherwise, the Proposed Project shall be deemed subject to the Design Component of Small Project Review for the limited purpose of determining an appropriate Street Wall location. The foregoing notwithstanding, within a PDA a Street Wall of any Proposed Project shall be built at the depth from the curb line stipulated in the applicable Development Plan. A Proposed Project shall comply with the requirements of this Subsection 41-18.1 with respect to each facade facing a public street, but excluding alleys and private ways.

Except as otherwise provided in this Subsection 41-18.1, Street Walls shall be continuous across a lot. However, design articulation involving deviations from the Street Wall Plane of two (2) feet or less shall be permitted across the Street Wall. Further, larger recesses and bays in Street Walls shall be permitted as follows. For Proposed Projects neither subject to nor electing to comply with Large Project Review, recesses in Street Walls shall be permitted as set forth in Table C of this article, and bay windows shall be permitted to extend from the Street Wall Plane above the ground floor ceiling height provided that such bay windows do not affect more than forty percent (40%) of the Street Wall Plane. For Proposed Projects that are subject to or elect to comply with Large Project Review, recesses and bays shall be permitted if appropriate to the creation of visually interesting designs or the accommodation of a specific ground level function, such as a hotel or residential carriageway, provided that the facade remains compatible with its historical and architectural surroundings and visual continuity in the block front is preserved, as certified by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review.

TABLE C

Permitted Street Wall Recesses*

<u>Location</u>	<u>Maximum Depth from the Street Wall Plane</u>	<u>Maximum Aggregate Surface Area</u>
Below ground floor ceiling height	Ten (10) feet	Fifty percent (50%)
Above ground floor ceiling height	Ten (10) feet	Fifty percent (50%)
	Fifteen (15) feet	Thirty percent (30%)

* The "ground floor ceiling height" means the height of the underside of the floor structure of the second floor. The "maximum aggregate surface area" means the portion, expressed as a percentage, of the surface area of the specified part of the Street Wall Plane (i.e., above or below the ground floor ceiling height) affected by recesses. The areas within which recesses are permitted are not cumulative; i.e., the maximum aggregate surface area that may be affected by recesses, whether of 10 or 15 feet, is 50%.

Project Review for any Proposed Project subject to or electing to comply with such review.

- (c) Rear Yard Setbacks. Any portion (including, without limitation, mechanical equipment) of any Proposed Project fronting on a street listed in Table F of this article shall be set back from the rear lot line by not less than the amount of the "rear yard setback" set forth in Table F for such street.

TABLE F

Rear Yard Setbacks

15' Rear Yard Setback

Lots fronting on:

Belvidere Street
Clearway Street
Edgerly Road
Haviland Street
Massachusetts Avenue, north of Huntington - southwest side
St. Germain Street - southwest side

20' Rear Yard Setback

Lots fronting on:

Albermarle Street
Blackwood Street
Boylston Street
Durham Street
Garrison Street
St. Germain Street - northeast side

25' Rear Yard Setback

Lots fronting on:

St. Botolph Street
Follen Street

30' Rear Yard Setback

Lots fronting on:

Cumberland Street
Huntington Avenue
Massachusetts Avenue, south of Huntington
West Newton Street

Anything to the contrary herein contained notwithstanding, the following are not subject to the rear yard setback requirements of this paragraph (c) and paragraph (d) of this Subsection 41-18.4:

(i) fences and walls not over six feet in height above the natural grade of the rear yard; (ii) accessory buildings not over fifteen (15) feet in height and not less than five (5) feet from any lot line; (iii) porches and balconies not occupying more than half the horizontal length of the rear facade and not less than five (5) feet from any lot line; (iv) fire escapes, bays, chimneys, flues, and gutters not less than five (5) feet from the rear lot line; and (v) belt courses, leaders, sills, pilasters, lintels, decorative cornices, and other surface ornamentation. In addition, the requirements of this paragraph (c) do not apply within a PDA.

The sky plane setback provisions of paragraph (a) of this Subsection 41-18.4, and not the rear yard requirements of this paragraph (c) nor paragraph (d) of this Subsection 41-18.4, shall apply to that part of a rear yard which abuts a public street other than a street less than twenty (20) feet in width or an alley. For the purposes of computing rear yard setbacks pursuant to this paragraph (c) and paragraph (d) of this Subsection 41-18.4, "rear lot line" has the meaning set forth in clause 31 of Section 2-1 of the code, except that where the rear of a lot abuts a public alley or private way, the rear lot line shall be deemed to be the centerline of said alley or way.

Notwithstanding any contrary provision of clauses 30 and 31 of Section 2-1 of this code, for any lot abutting two or more streets the determination of which portions of the lot constitute the "front" and "rear" shall be made as follows: (i) if the building on the lot is or is proposed to be contiguous with an adjacent building, the front and rear of said lot shall correspond to the front and rear of said adjacent building; (ii) if the determination cannot be made on the basis of clause (i), the rear of said lot shall be the portion abutting a public alley or private way and the front shall be the portion that most nearly qualifies as distant and opposite the rear of said lot; however, (iii) if the determination cannot be made on the basis of either clauses (i) or (ii) above, the rear of said lot shall be determined in accordance with said clauses 2-1(30) and 2-1(31) of this code.

- (d) Special Rear Setbacks in the Huntington Avenue Boulevard Area. Any Proposed Project in the Huntington Avenue Boulevard Area is subject to the following special rear setback requirements. Other than decorative cornices and surface ornamentation, any portion of said Proposed Project (including, without limitation, mechanical equipment) shall be set back from the rear lot line:

- (i) at and above grade by thirty (30) feet (rear yard setback);
 - (ii) above a building height of sixty (60) feet by ten (10) additional feet for a total a setback of forty (40) feet;
 - (iii) above a building height of eighty (80) feet, by five (5) additional feet for a total setback of forty-five (45) feet.
- (e) Special Side Setbacks in the Huntington Avenue Boulevard Area. Any Proposed Project located in the Huntington Avenue Boulevard Area is subject to the following special side setbacks: other than decorative cornices and surface ornamentation, any portion of such a Proposed Project (including, without limitation, mechanical equipment) above a building height of eighty (80) feet shall be set back by not less than ten (10) feet from any Street Wall facing Cumberland Street, Newton Street, or Garrison Street, or building edge facing Public Alley No. 405.
- (f) Maximum Floor Plates. The following is applicable to any Proposed Project with a building height in excess of one hundred fifty-five (155) feet: above a height of one hundred fifty-five (155) feet, the average gross floor area per floor of separate buildings or elements of such Proposed Project shall not exceed twenty-two thousand five hundred (22,500) square feet; and no single floor above such height shall exceed a maximum gross floor area of twenty-five thousand (25,000) square feet.
5. Design Review and Special Design Guidelines for Protection Areas. Within the St. Botolph Street Protection Area and the St. Germain Street Protection Area, any Proposed Project for exterior alteration or construction shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component). To be consistent with the design guidelines established in this subsection 41-18.5, a Proposed Project shall be designed such that the exterior proportions, scale, massing, window treatment, materials, colors, and architectural detailing are compatible with the observable historical and architectural character of other buildings in the area within which the Proposed Project is located, and with streets and open spaces to which it is visually related, as identified in the Huntington Avenue/Prudential Center District Plan. To preserve a lot-by-lot appearance, facade ornamentation should be varied, and facades should be divided into modules or bays to reflect the lot width established by historic buildings within each area and to continue the established bay rhythm of each block.

- (a) Special Facade Considerations. In reaching its decision, pursuant to Section 80E-4.1 (Standards for Small Project Review Approval: Design Component), the Boston Redevelopment Authority shall consider whether the Proposed Project will have an adverse effect on: (a) the character of the St. Botolph Street Protection Area and the St. Germain Street Protection Area as areas within which traditional brownstone and brick residential facades predominate; or (b) the lot-by-lot appearance of the district.

(↑As amended on May 9, 1996 and July 31, 1997.)

SECTION 41-19. Off-Street Parking. The provisions of Article 23, Off-Street Parking, shall govern any Proposed Project in the Huntington Avenue/Prudential Center District, except a Proposed Project in a PDA, for which off-street parking shall be provided as required in the applicable Development Plan. The off-street parking requirements stated as applicable to a specific floor area ratio set forth in Table B of Section 13-1 shall also apply to the same floor area ratio set forth in this article. Where a use specified in this article is not included in any use item number listed in Article 23, off-street parking facilities shall be provided in accordance with the requirements for the use item number listed in Article 23 which is most similar to such use. The foregoing notwithstanding, in no event shall any Proposed Project be required to provide parking in excess of that permitted under any applicable state or federal parking freeze or similar law. No portion of any lot or structure within the St. Botolph Street Protection Area or St. Germain Street Protection Area shall be used, or arranged or designed to be used, for parking accessed directly from a public street (excluding alleys) over a curb cut not existing as of the date of the first notice of hearing before the commission for the adoption of this article.

↓**SECTION 41-20. Off-Street Loading.** Article 24 provides the regulations governing the provision and design of off-street loading facilities for the use of any structure or land not subject to Large Project Review. Where a use specified in this article is not included in any use item number listed in Article 24, off-street loading facilities shall be provided in accordance with the requirements for the use item number listed in Article 24 which is most similar to such use. The provision and design of off-street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review, and mitigative measures, as appropriate, shall be required through such review to minimize the environmental effects of any off-street loading facilities on adjacent properties. Notwithstanding any contrary provision of Article 24, off-street loading facilities shall not be permitted in the St. Botolph Street Protection Area or in the St. Germain Street Protection Area.

(↑As amended on May 9, 1996.)

SECTION 41-21. **Regulations.** The Boston Redevelopment Authority may promulgate and amend from time to time regulations to administer this article.

SECTION 41-22. **Severability.** The provisions and requirements of this article are severable, and if any such provision or requirement shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision or requirement of this article.

Ground Level Uses

1. The following uses are Ground Level Uses, and are allowed uses within the Huntington Avenue/Prudential Center District, provided that the uses described in Use Items No. 34A and No. 38A are forbidden. This list is intended to be illustrative of ground level uses and not exclusive.

Antique stores
Appliances, repair shops
Appliances, sales
Art galleries, commercial and non-profit
Art metal craft shops
Art needle work shops
Artists' supply and music stores
Athletic goods stores
Auditoriums
Bakeries or pastry shops
Bank branch offices
Bank machines, provided that the ground level street frontage of a bank facility containing only bank machines is limited to twenty (20) feet
Barber shops
Beauty parlors
Bicycle stores, rental or repair
Book stores or card stores
Cafes
Candy stores
Carpet, rugs, linoleum, or other floor covering stores
Churches
Cigar stores
Clock or watch stores, or repair shops
Clothing retail establishments
Clothing stores (men's, women's, children's apparel)
Clubs, noncommercial
Coffee shops
Coin stores
Community centers
Costume rental establishments
Dance halls, public
Day care centers
Delicatessen stores
Department stores
Diners

APPENDIX B to ARTICLE 41 (continued)

Dressmaking shops, custom
Drug stores
Dry cleaning establishments or laundromats
Dry goods or fabric stores
Eating or drinking places, in accordance with the provisions of Use Item No. 38A
Entrance/exit to off-street parking or loading area provided that it occupies not more than thirty (30) feet of ground level street frontage or such other dimension as may be provided in an approved Development Plan
Entrance/exit to public transit facilities
Fabric or yarn store
Fire Stations
Fishing tackle or equipment stores, or rental establishments
Florist shops
Food stores, including supermarkets, produce and grocery stores, markets, health foods, delicatessens, prepared food/special food, spices and herbs, coffees, teas, meat, fish, poultry, and cheese stores
Furniture stores
Furrier shops, custom
Gift shops
Hair products for headwear
Hardware stores
Health club or gym (only a Lobby Entrance Area not occupying more than forty (40) feet of ground level street frontage or such other dimension as is provided in an approved Development Plan is allowed at-grade on streets bounding blocks)
Historical exhibits
Hobby shops
Hotel or motel (only a Lobby Entrance Area not occupying more than forty (40) feet of ground level street frontage or such other dimension as is provided in an approved Development Plan is allowed at-grade on streets bounding blocks)
Housewares
Household appliance repair shops
Ice cream stores
Interior decorating establishments
Jewelry shops
Kitchenware
Lamp shops
Leather goods or luggage stores
Libraries
Locksmith shops
Luggage stores
Millinery shops

APPENDIX B to ARTICLE 41 (continued)

Motion pictures or video production studio
Museums
Music stores
Musical instruments, repair
Newsstands, enclosed
Office or business machine stores, sales or rental
Offices (only a Lobby Entrance Area not occupying more than forty (40) feet of ground level street frontage or such other dimension as is provided in an approved Development Plan is allowed at grade on streets bounding blocks)
Optician or optometrist establishments
Orthopedic stores
Paint stores
Parish houses
Parks, public or private
Party shops
Perfume shops
Pet shops
Phonographic repair shops
Photographic developing or printing establishments
Photographic equipment stores
Photographic studios
Photographic supply stores
Photostating establishments
Picture framing stores
Police stations
Post offices
Printing establishments
Radio appliance shop, repair or sales
Record stores
Recreational centers (noncommercial)
Residences (only a Lobby Entrance Area not occupying more than forty (40) feet of ground level street frontage or such other dimension as is provided in an approved Development Plan is allowed at-grade on streets bounding blocks)
Schools
Sewing machine stores, selling household machines
Shoe repair and shoeshine shops
Shoe stores
Sign painting shops
Skating rinks, outdoor ice
Sporting goods stores
Sports shop

APPENDIX B to ARTICLE 41 (continued)

Stamp stores
Stationery stores
Studios: music, dancing, visual arts, or theatrical
Tailor shops, custom
Telegraph offices
Television repair shops
Theater
Ticket sales
Tobacco stores
Tour operator
Toy stores
Typewriter stores
Typewriter or other small business machine repair stores
Variety or convenience stores
Video or motion picture store, sale or rentals
Wallpaper stores

APPENDIX C to ARTICLE 41

Definitions

For the purposes of this article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Adjusted Income" is defined as it is in 24 CFR Section 813.102, as amended, or as set forth in regulations adopted in accordance with Section 41-14.
2. "Affordable" means, either an owner-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household for mortgage and insurance payments, real estate taxes, and condominium fees of not more than thirty percent (30%) of its Adjusted Income to occupy the unit, or a renter-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household for rent payments of not more than thirty percent (30%) of its Adjusted Income.
3. "Annual Income" is defined as it is in 24 CFR Section 813.106, as amended, or as set forth in regulations adopted in accordance with Section 41-14.
4. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 41-4, or the authorized agent of any such person or entity.
5. "Curb Line" means the line of the curb or other structure or indication separating the street from the sidewalk.
6. ["Development Plan"]. Deleted on May 9, 1996 by Text Amendment No. 228.
7. "Display Window Area" means that portion of the Street Wall between (i) a height of two (2) feet above the ground floor and (ii) the height of the underside of the floor structure of the second floor, or fourteen (14) feet, whichever is less.
8. "Ground Level Uses" means the uses listed in Appendix B to this article.
9. "Historic Building" means any building listed on the Massachusetts Register of Historic Places.
10. "Landmark" means any building or structure designated as a landmark by the Boston Landmarks Commission pursuant to Chapter 772 of the Acts of 1975, as amended.

APPENDIX C to ARTICLE 41 (continued)

11. "Lobby Entrance Area" means the frontage at street level of the lobby of an office, residential, hotel/motel, or other structure.
12. "Low-Income Household" means any household whose Annual Income does not exceed 50% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
13. "Median Gross Income" is defined as it is by the United States Department of Housing and Urban Development, pursuant to 24 CFR Section 813.102, as amended, or as set forth in regulations adopted in accordance with Section 41-14.
14. "Moderate-Income Household" means any household whose Annual Income does not exceed 80% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
15. "Huntington Avenue/Prudential Center District Plan" means the zoning regulations applicable to the Huntington Avenue/Prudential Center District and the plan for the District as evidenced by applicable development precedents and planning studies and any applicable comprehensive plan for the District, adopted by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of the code.
- ↕ 16. "Huntington Avenue/Prudential Center District" means the area depicted on Map 1D of this code.

(↕ As amended on July 31, 1997.)
17. "Proposed Project" means the demolition, erection, reconstruction, structural alteration, or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit. A Proposed Project may proceed in phases and may include more than one building, structure, or use.
18. "State Building Code" means the state building code and amendments and rules and regulations thereto as promulgated by the state board of building regulations under sections ninety-three, ninety-four, and ninety-five of Chapter One Hundred Forty-Three of the General Laws.

APPENDIX C to ARTICLE 41 (continued)

19. "Street Wall" means the portion of the exterior wall (including recesses, bays, windows, doors, and other features) of a Proposed Project that fronts on a public street (excluding public alleys) and is below the Street Wall Height, determined pursuant to Section 41-18.
20. "Street Wall Plane" means the planar surface of the Street Wall (disregarding recesses, bays, windows, doors, etc.) required pursuant to Section 41-18.
21. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the last occupied floor shall not exceed the specified height limit for the applicable district or subdistrict by more than the lesser of (i) ten (10) feet or (ii) two-thirds of the average floor-to-floor height of the building, excluding the ground floor. "Substantial Accord" shall not be interpreted as allowing a Proposed Project to exceed the maximum permitted FAR.
22. "Underlying Zoning" means all zoning regulations, with the exception of this article, which are contained in this code.
23. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

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↑ARTICLE 43

CHINATOWN DISTRICT

(↑Article inserted on June 14, 1990*)

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*Date of public notice: May 19, 1990 (see St. 1956, c. 665, s. 5).

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 43-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the Chinatown District as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this Code. The goals and objectives of this Article and the Chinatown Community Plan are to upgrade the quality of life and ensure the long-term viability of Chinatown as a historic residential neighborhood and a unique cultural, business, and service center; to create housing which is affordable to all segments of the community; to encourage community businesses and trades; to diversify the economy and improve employment opportunities for neighborhood residents; to protect the historic and cultural resources of the district; to improve the environment through the establishment of open space subdistricts; to manage institutional growth in an open process and to establish boundaries for institutional uses; to promote the most desirable use of land in accordance with the Chinatown Community Plan; and to promote the public safety, health, and welfare of the people of Boston.

SECTION 43-2. Recognition of the Chinatown Community Plan. In accordance with Section 27D-18 of this Code, which requires production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the Chinatown District (Special Study Area No. 7), the Zoning Commission hereby recognizes the Chinatown Community Plan as the general plan for Chinatown. The Chinatown Community Plan also serves as the portion of the general plan for the City of Boston applicable to the Chinatown District. This Article is one of the means of implementing the Chinatown Community Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 43-3. Physical Boundaries. The provisions of this Article are applicable only in the Chinatown District. The boundaries of the Chinatown District are as shown on a map entitled "Map 1G Chinatown District (supplemental to 'Map 1 Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 43-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Chinatown District, and applies as specified in Section 4-1 regarding the conformity of buildings and land to this code. Exceptions to the provisions of these regulations, pursuant to Article 6A, shall not be available, except to the extent expressly provided in this Article or Article 6A. Application of the provisions of Article 27D to the Chinatown District is rescinded, and the Chinatown District is deleted from the Downtown Interim Planning Overlay District as of the effective date of this Article, except as provided below. Where conflicts between this Article and the rest of this Code exist, the provisions of this article shall govern. Except where specifically indicated in this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 24, inclusive, of this Code for the Chinatown District. However, the

exceptions to building height limitations provided for in Section 16-2 shall apply to building height limitations established in this Article, unless otherwise expressly provided. Further, the provisions of this Article are not applicable to the following Proposed Projects, which are governed by the rest of this Code, including Article 27D:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

↓SECTION 43-5. **Establishment of Protection Areas.** This Section establishes three "protection areas" within the Chinatown District. The three protection areas are established in order to protect the existing scale, the quality of the pedestrian environment, the character of the residential/commercial mixed-use neighborhoods, and concentrations of historic buildings within and abutting the protection areas. The three protection areas are designated on Map 1G of this Code and are referred to herein as "Liberty Tree Protection Area," "Beach/Knapp Protection Area," and "Historic Chinatown Protection Area." Any other provision of this Article or this Code notwithstanding, Proposed Projects within a protection area are limited to the building height and FAR specified for such protection area as follows:

1. Liberty Tree Protection Area. Within that portion of the Chinatown District depicted on Map 1G of this Code as the "Liberty Tree Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of six (6) are allowed.
2. Beach/Knapp Protection Area. Within that portion of the Chinatown District depicted on Map 1G of this Code as the "Beach/Knapp Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of six (6) are allowed.
3. Historic Chinatown Protection Area. Within that portion of the Chinatown District depicted on Map 1G of this Code as the "Historic Chinatown Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of six (6) are allowed.

The foregoing provisions of this section notwithstanding, a Proposed Project within a protection area shall have a maximum allowed building height of eighty (80) feet and a maximum allowed FAR of seven (7) if such Proposed Project is subject to or has

elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(↑As amended on May 9, 1996.)

↑SECTION 43-6. **Establishment of Subdistricts.** This Section establishes the following subdistricts within the Chinatown District, each as designated on Map 1G of this Code:

1. Commercial Chinatown Subdistrict. Within the Commercial Chinatown Subdistrict, a maximum building height of eighty (80) feet and FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
2. Residential Chinatown Subdistrict. Within the Residential Chinatown Subdistrict, a maximum building height of eighty (80) feet and a maximum FAR of four (4) are allowed; provided that any proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of six (6) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
3. Institutional Subdistrict. Within the Institutional Subdistrict, a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
4. Health Sciences Subdistrict. This Subdistrict constitutes an Institutional Master Plan Area pursuant to subsection 43-18.2 of this Code, and comprises Areas A, B and C, as designated on Map 1G of this Code. Within the Health Sciences Subdistrict, a maximum building height of eighty (80) feet and FAR of six (6) are allowed; provided that, if any Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6, then such Proposed Project shall be allowed maximum building heights and maximum FARs as follows:

- (a) Within that portion of the Health Sciences Subdistrict depicted on Map 1G as Area A, a maximum building height of one hundred forty (140) feet and a maximum FAR of nine (9).
- (b) Within that portion of the Health Sciences Subdistrict depicted on Map 1G as Area B, a maximum building height of one hundred seventy (170) feet and a maximum FAR of eleven (11).
- (c) Within that portion of the Health Sciences Subdistrict depicted on Map 1G as Area C, a maximum building height of two hundred (200) feet and a maximum FAR of fourteen (14).

(↑ As amended on March 6, 1995 and May 9, 1996.)

↓ **SECTION 43-7. Establishment of the Turnpike Air-Rights Special Study Area.** This Section establishes the "Turnpike Air-Rights Special Study Area" within the Chinatown District, as designated on Map 1G of this Code. Within the Turnpike Air-Rights Special Study Area, a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

In accordance with the Chinatown Community Plan, a comprehensive plan for the Turnpike Air-Rights Special Study Area shall be developed and shall address, at a minimum, the following: (a) specific measures to expand the existing residential areas, community services, and open spaces that will benefit the abutting communities, including Chinatown, the South End, and Bay Village; (b) appropriate urban design guidelines to govern and facilitate the proper development of the Turnpike Air-Rights Special Study Area; (c) appropriate means to encourage the creation of housing, including Affordable housing; (d) measures to assure an appropriate relationship and transition between the scale and density of new residential development and the scale and density of existing residential areas in surrounding neighborhoods; (e) an open space plan for the Turnpike Air-Rights Special Study Area, providing for urban parks and usable recreation areas; (f) appropriate means to encourage a mix of retail uses serving neighborhood employment and consumer needs; (g) the appropriate mix of land uses to accomplish these objectives; and (h) land use regulations necessary to implement the comprehensive plan. No development plan approval shall be granted pursuant to Section 80C-4 (Standards for Planned Development Area Review Approval) for a PDA

in the Turnpike Air-Rights Special Study Area, until such comprehensive plan is completed.

(↑As amended on May 9, 1996.)

↑SECTION 43-8. **Establishment of the Chinatown Gateway Special Study Area.** This Section establishes the "Chinatown Gateway Special Study Area" within the Chinatown District, as designated on Map 1G of this Code. Within the Chinatown Gateway Special Study Area, a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

In accordance with the Chinatown Community Plan, a comprehensive plan for the Chinatown Gateway Special Study Area shall be developed and shall address, at a minimum, the following: (a) specific measures to balance the different needs for housing resources, economic diversification, entrepreneurial development, and open space; (b) appropriate urban design guidelines to govern and facilitate the proper development of the Chinatown Gateway Special Study Area, including the creation of an effective transition between residential areas and development at South Station; (c) appropriate means to encourage the creation of housing, including Affordable housing; (d) a plan to encourage the diversification and expansion of the neighborhood economy, employment opportunities, and local business ownership; (e) an open space plan for the Chinatown Gateway Special Study Area, providing for urban parks and usable recreation areas; (f) appropriate means to encourage a mix of retail uses serving neighborhood employment and consumer needs; (g) the appropriate mix of land uses to accomplish these objectives; and (h) land use regulations necessary to implement the comprehensive plan's proposals. No development plan approval shall be granted pursuant to Section 80C-4 (Standards for Planned Development Area Review Approval) for a PDA in the Chinatown Gateway Special Study Area until such comprehensive plan is completed.

(↑As amended on May 9, 1996.)

↑SECTION 43-9. **Establishment of the Tyler Street Special Study Area.** This Section establishes the "Tyler Street Special Study Area" within the Chinatown District, as designated on Map 1G of this Code. Within the Tyler Street Special Study Area, a maximum of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

In accordance with the Chinatown Community Plan, a comprehensive plan for the Tyler Street Special Study Area shall be developed and shall address, at a minimum, the following: (a) specific measures to balance and integrate institutional development, housing, community services, and businesses; (b) appropriate urban design guidelines to govern and facilitate the proper development of the Tyler Street Special Study Area, including urban parks and usable recreation space; (c) appropriate means to encourage the creation of housing, including Affordable housing; (d) appropriate means to encourage the establishment of community facilities serving neighborhood needs; (e) an open space plan for the Tyler Street Special Study Area, providing for urban parks and usable recreation areas; (f) appropriate means to encourage a mix of retail uses serving neighborhood employment and consumer needs; (g) the appropriate mix of land uses to accomplish these objectives; and (h) land use regulations necessary to implement the comprehensive plan's proposals.

(↑As amended on May 9, 1996.)

SECTION 43-10. Establishment of Open Space Subdistricts. This Section establishes within the Chinatown District Open Space Subdistricts as listed in Table A of this Article and designated on Map 1G of this Code. Regulations applicable to uses in such subdistricts are set forth in Article 33 of this Code, as indicated in Table A of this Article.

TABLE A

Open Space Subdistricts

<u>Name</u>	<u>Designation</u>
Gateway Park and Expansion Area	Recreation (OS-RC)*
Pagoda Park	Recreation (OS-RC)*
Tai Tung Park	Urban Plaza (OS-UP)**

* Recreation open space subdistricts consist of land appropriate for and limited to active or passive recreational uses. See Section 33-10.

** Urban Plaza open space subdistricts consist of land appropriate for and limited to passive recreational uses. See Section 33-15.

↑**SECTION 43-11. Increased FAR for Community Service Organizations.** Under the provisions of Article 6A and this Section, the Board of Appeal may grant an exception to the maximum allowed FAR for a Proposed Project in the Chinatown District in the following manner. The Board of Appeal shall grant such an exception for increased FAR only if it finds that: (a) a portion of the floor area of the Proposed

Project shall be limited to Community Uses as further provided in Subsection 1 below; (b) the Proposed Project and its massing are architecturally compatible with the surrounding area, in accordance with the Urban Design Component of Large Project Review; (c) such an exception is in harmony with the general purpose and intent of this Code; (d) the Proposed Project is consistent with the Chinatown Community Plan and the general plan for the city as a whole; and (e) if such exception relates to a Development Impact Project as defined in Section 80B-7 (Development Impact Project Exactions), the Applicant shall have complied with the requirements set forth in said Section 80B-7. The increased FAR available pursuant to this Section is up to one (1) ratio point. The procedure for granting such exceptions shall be in accordance with the provisions of Section 6A-2, governing the granting of exceptions; provided that a four-fifths majority of the Boston Redevelopment Authority shall have recommended approval of the exception for increased FAR prior to the Board of Appeal's consideration of the application.

1. Uses Qualifying a Proposed Project for Increased FAR. The Board of Appeal may grant an exception for increased FAR corresponding to additional gross floor area of up to the amount of floor area to be reserved permanently for Community Uses, as described in Appendix B to this Article, and, in any event, not exceeding one (1) ratio point. The Board of Appeal may require the Applicant to provide evidence of a long-term commitment by the Applicant itself or a third party either: (a) to use the floor area for such Community Uses; or (b) to lease or otherwise transfer such floor area for such Community Uses (which may include a lease or transfer to the City of Boston or its designee).
2. Use of the Floor Area Qualifying Proposed Projects for Increased FAR. The use of the amount of floor area of a Proposed Project which qualifies the Proposed Project for an exception for increased FAR in accordance with the provisions of this Section 43-11 shall be limited to the Community Uses, and any other use of such an amount of floor area shall be forbidden. The nonuse of floor area which qualifies a Proposed Project for increased FAR shall not affect the validity of such exception.

(↑As amended on May 9, 1996.)

↑SECTION 43-12. **Establishment of Areas Within Which Planned Development Areas May Be Permitted.** This section establishes three areas within which Planned Development Areas ("PDAs"), as described in Section 3-1A.a, may be permitted within the Chinatown District. The purposes for establishment of the areas within which PDAs may be permitted are: to establish a more flexible zoning law and encourage large-scale private development on underutilized sites in the Chinatown District while insuring high-quality design by providing planning and design controls; to build affordable housing; to encourage the creation of affordable housing and open space; to create community facilities; to provide for neighborhood economic

development and commercial expansion which is compatible with adjacent uses; to provide connections from Chinatown to adjacent areas of the city; and to direct institutional expansion outside the core of Chinatown. The three areas within which PDAs may be permitted are shown on Map 1G of this Code, and are otherwise referred to herein as the "Residential Chinatown PDA Area," the "Turnpike Air-Rights PDA Area," and the "Chinatown Gateway PDA Area." No PDA is permitted within the Chinatown District except within these areas.

1. Consistency with Section 3-1A; Review and Approval Requirements. Any application for Development Plan approval for a Proposed Project within the Chinatown District is subject to the provisions of this Section and Sections 43-13 through 43-17, in addition to the provisions of Section 3-1A.a. See Article 80 concerning the applicability of Planned Development Area Review.
2. Amendment of Development Plan. No Proposed Project in a PDA shall proceed, no change in use category of any public benefit qualifying a Proposed Project for Development Plan approval shall proceed, and no exterior alteration or change in use category of a rehabilitated Landmark, Historic Building, or Theater qualifying a Proposed Project for Development Plan approval shall proceed, unless the Boston Redevelopment Authority has certified to the Commissioner of Inspectional Services that the Proposed Project is consistent with the approved Development Plan, as amended from time to time, for such PDA or the portion thereof to which said work relates. See Section 80C-7 (PDA Review: Amendment of PDA Plans) for the procedure for amendment of a Development Plan.

(↑As amended on May 9, 1996 and July 31, 1997.)

SECTION 43-13. Planned Development Areas: Use and Dimensional Regulations. The land use and dimensional regulations for PDAs in the Chinatown District are established by this section.

1. Use Regulations. Any Proposed Project within a PDA is subject to the use regulations set forth in Section 43-19.
2. Building Height and FAR Regulations. The building height for any Proposed Project within a PDA shall be in substantial accord with the building height specified in the applicable Development Plan, which specified building height shall not exceed the maximum building height stated in Table B of this Article. The FAR for any Proposed Project within a PDA shall not exceed the FAR specified in the applicable Development Plan, which specified FAR shall not exceed the applicable maximum FAR stated in said Table B, subject to the allowance of up to one (1) ratio point pursuant to the provisions of Section 43-11.

TABLE B

**Chinatown District
Planned Development Areas
Dimensional Regulations**

	<u>Maximum Building Height/ FAR Standards</u>
Chinatown Gateway PDA Area	300'/10
Residential Chinatown PDA Area	175'/6
Turnpike Air-Rights PDA Area	250'/6

↑SECTION 43-14. **Planned Development Areas: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(↑As amended on May 9, 1996 and July 31, 1997.)

SECTION 43-15. [Planned Development Areas; Authorization for Exceptions.] Deleted on May 9, 1996 by Text Amendment No. 228.

↑SECTION 43-16. **Planned Development Areas: Public Benefit Criteria.** The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this Article if the Development Plan proposes a plan for public benefits, consistent with the Chinatown Community Plan, including one or more of the following: (a) the provision of Affordable housing, in accordance with the provisions of Subsection 1, below, of this Section; (b) the creation of neighborhood economic development opportunities, in accordance with the provisions of Subsection 2, below, of this Section; (c) the construction of community facilities, in accordance with the provisions of Subsection 3, below, of this Section; (d) the development of cultural facilities, in accordance with the provisions of Subsection 4, below, of this Section; or (e) the substantial rehabilitation of an eligible Theater, Historic Building, and Landmark, in accordance with the provisions of Subsection 5, below, of this Section. On the basis of provision of these mitigating public benefits under this Section, the Boston Redevelopment Authority may approve a Development Plan providing for a building height and FAR deviating from the standards set forth in Section 43-7, 43-8, or 43-9, as the case may be, provided that such building height and FAR shall not exceed the limits provided for in Section 43-13.

1. Development Plan Approval for Creation of Affordable Housing. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or cause the construction of housing if: (a) at least fifty percent (50%) of the gross floor area of the Proposed Project is devoted to Residential Uses; (b) either (i) at least fifty percent (50%) of the dwelling units proposed in the Development Plan on site are Affordable; or (ii) the Applicant creates or causes the creation of the same number of Affordable units off site in the Chinatown District; and (c) a minimum of 0.7 off-street parking space is provided for each dwelling unit or, if a lesser number of spaces is permitted to be provided for such dwelling units pursuant to the terms of any applicable state or federal parking freeze or similar law, the greatest number of spaces permitted for such dwelling units under such parking freeze or similar law.
2. Development Plan Approval for Creation of Neighborhood Economic Development Opportunities. The Boston Redevelopment Authority may approve a Development Plan for a Proposed Project to be constructed on a site owned by a Public Agency if the Development Plan proposes the creation of neighborhood economic development opportunities through the provision of: (a) entrepreneurial assistance measures, such as (i) informational, outreach, and educational programs concerning new business development; (ii) general business planning and management counseling; (iii) technical assistance; and (iv) the establishment of general financing options; (b) a set-aside of space for neighborhood businesses or assistance with commercial site improvement; (c) an opportunity for equity participation in business opportunities by Chinatown residents and community development corporations; or (d) franchise training programs or other job-training programs which include employment opportunities upon completion.
3. Development Plan Approval for Construction of Community Facilities. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or to cause the construction or expansion of community facilities if: (a) the community facilities are fully finished and equipped and are of a size and type which are appropriate, under the circumstances pertaining at the time of the application for Development Plan approval, to the needs of the Chinatown community, as identified by the Community Service Needs Assessment and Feasibility Study in the Chinatown Community Plan; and (b) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the community facilities in accordance with the Chinatown Community Plan or (ii) to lease or otherwise transfer such community facilities for such use (which may include a lease or transfer to the City of Boston or its designee). The use of any community facility which is developed for qualification as a public benefit for Development Plan approval under this

Article shall be limited to the uses specified in the Development Plan. Such uses shall be consistent with the uses specified in the Chinatown Community Plan. To guarantee the continuation of such uses, the Applicant may, but shall not be required to, lease or otherwise transfer any right, title, and interest in the community facility to the City of Boston or its designee. No change in the use of any public benefit providing a basis for Development Plan approval shall proceed unless there has been an amendment to the Development Plan.

4. Development Plan Approval for Development of Cultural Facility. The Boston Redevelopment Authority may approve a Development Plan proposing to develop or to cause the development of a new Theater or other cultural facility if: (a) the new Theater or other cultural facility is of a useful condition, size, and type which is appropriate, under the circumstances pertaining at the time of the application for Development Plan approval, to contribute to the balance of cultural facilities responsive to the needs of the Chinatown District and the City of Boston, as identified in the Chinatown Community Plan, with consideration being given to the Theaters and cultural facilities being provided or rehabilitated in the Midtown Cultural District and to the provisions of the Midtown Cultural District Plan; (b) the Development Plan provides sufficient assurance of the successful operation of the Theater or cultural facility, through provision for necessary ancillary or accessory facilities such as administrative offices, rehearsal/studio space, dressing room/green room space, storage space, or other facilities; and (c) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the Theater or cultural facility in accordance with the Chinatown Community Plan or (ii) to lease or otherwise transfer such Theater or cultural facility for such use (which may include a lease or transfer to the City of Boston or its designee).
5. Development Plan Approval for Substantial Rehabilitation of Existing Theaters, Historic Buildings, or Landmarks. The Boston Redevelopment Authority may approve a Development Plan proposing substantial rehabilitation of an eligible Theater, Historic Building, or Landmark if: (a) the Development Plan proposes substantial rehabilitation of an eligible Theater, Historic Building, or Landmark, which the Applicant owns or will own at the time set for commencement of construction, in accordance with the provisions of paragraphs (x) and (y) of this Subsection; or (b) the Applicant and the fee simple owner (or agent thereof) (the "Owner") of an eligible Theater, Historic Building, or Landmark enter into an agreement which agreement shall provide that a substantial rehabilitation of such a building shall be performed in accordance with the provisions of paragraphs (x) and (y) of this Subsection, and the Development Plan reflects the provisions of such agreement and the Applicant's undertaking to be bound

by them. Under clause (b) above, an agreement shall be entered into which shall conform to the provisions of Section 38-25. In the case of existing Theaters, Development Plan approval shall also be subject to the provisions of Subsection 38-14.1. In the case of Landmarks, the substantial rehabilitation must also be approved by the Boston Landmarks Commission in accordance with Chapter 772 of the Acts of 1975, as amended from time to time. A Theater, Historic Building, or Landmark shall be "eligible" for the purpose of this Subsection 5 if it is listed in Appendix C to this Article.

- (x) Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an eligible Theater qualifying as a public benefit for Development Plan approval consists of: (i) major interior or structural changes for the purpose of improving the Theater's design and its viability for Theater use, including an equipment level commensurate with its proposed use, or (ii) historic restoration of the interior of the Theater. Major exterior renovations and improvements, such as a facade restoration, may also be included in the qualification as substantial rehabilitation. Substantial rehabilitation to the interior of a Theater may include, without limitation, such work as expanding stage or wings, reraking the orchestra, increasing rehearsal, dressing room, or lobby space, or historic restoration. It may also include conversion to Theater use of an original Theater currently in other use. Substantial rehabilitation does not mean normal Theater maintenance, painting, or improvements to mechanical systems alone.
 - (y) Qualification of Substantial Rehabilitation of Landmark or Historic Building. Substantial rehabilitation of an eligible Landmark or Historic Building qualifying as a public benefit for Development Plan approval consists of alterations or repairs made to a building or structure, costing in excess of fifty percent (50%) of the physical value of the building or structure, in accordance with the Boston Landmarks Commission's standards and criteria for landmark rehabilitation, if any. The physical value of a structure or structures shall be deemed to be the assessed value of the structure, as recorded on the assessment rolls of the City as of the January 1 preceding the date of the application for Development Plan approval.
6. Use of Theaters and Cultural Facilities. The use of any Theater or cultural facility which is developed or substantially rehabilitated for qualification as a public benefit for Development Plan approval under this Article shall be limited to the uses specified in the Development Plan. Such uses shall be consistent with the uses specified in the Chinatown Community Plan. To guarantee the continuation of such uses, the Applicant may, but shall not

be required to, lease or otherwise transfer any right, title, and interest in the Theater or cultural facility to the City of Boston or its designee.

(↑As amended on May 9, 1996.)

↑SECTION 43-17. **Planned Development Areas: General Design and Environmental Impact Standards.** In addition to the Large Project Review requirements set forth in Article 80 of this code, Proposed Projects submitted for approval as part of a Development Plan application under Planned Development Area Review shall comply with the Chinatown General Design and Environmental Impact Standards described herein. The purpose of these additional standards is to maintain and improve the quality of life in the Chinatown area, with particular regard to the Landmarks and buildings listed on the Massachusetts Register of Historic Places.

1. Open Space. A Proposed Project must provide open space which has landscaping features, a management plan, and a shape, dimension, character, and location suitable to assure its use for park, recreation, conservation, or garden purposes.
2. Shadow Criteria. Each Proposed Project shall be arranged and designed in a way to assure that it does not cast shadows for more than two hours from 10:00 a.m. through 2:30 p.m., on any day from March 21 through September 21, in any calendar year, on Gateway Park, Pagoda Park, or Tai Tung Park.
3. Wind. Buildings shall be designed to avoid excessive and uncomfortable downdrafts on pedestrians. Each Proposed Project shall be shaped, or other wind-baffling measures shall be adopted, so that the Proposed Project will not cause ground-level ambient wind speeds to exceed the standards in Table C of this Article.

TABLE C

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity (egv*)</u>	<u>Permitted Annual Occurrence Frequency</u>
Limit for Safety- All Pedestrian Areas	13.8 m/sec (31 mph)	1.0%
Major Walkways- Especially Principal Egress Path for High-Rise Buildings	13.8 m/sec (31 mph)	1.0%
Other Pedestrian Walkways- Including Street and Arcade Shopping Areas	11.2 m/sec (25 mph)	5%
Open Plazas and Park Areas Walking, Strolling Activities	6.3 m/sec (14.1 mph)	15%
Open Plazas and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

- * The effective gust velocity (egv) is defined as $egv = U + 1.5 fvc$, where U is the mean windspeed at a particular location and fvc is the root mean square of the fluctuating velocity component measured at the same location over the same time interval.

4. Traffic Mitigation Measures. Each Proposed Project in a PDA that is subject to Large Project Review shall be subject to a Transportation Access Plan consistent with the Chinatown Transportation Improvement Plan (which Plan is included in the Chinatown Community Plan) and providing for effective transportation access to the Proposed Project and mitigation measures designed to minimize adverse traffic impacts on the Chinatown District and the South Cove, Bay Village, and South End neighborhoods. Such Transportation Access Plan shall also provide for effective parking management measures to minimize adverse parking effects within the Chinatown District and said neighborhoods. The Transportation Access Plan shall demonstrate that the location of the Proposed Project with respect to vehicular access and circulation and proximity to other

transportation systems is suitable for increased floor area. By its design and management, the Proposed Project shall emphasize use of mass transit and feasible measures to be undertaken to limit the impact of the Proposed Project on traffic congestion.

5. Parking Capacity Standards. Notwithstanding any contrary requirement of Section 43-23, each Proposed Project shall include no more than one (1) parking space per fifteen hundred (1,500) square feet of office development. Parking spaces reserved exclusively for retail, residential, or other nonoffice uses within a Proposed Project shall not be considered in such computation.
6. Landmarks and Historic Buildings. Each Proposed Project shall be generally designed and arranged in such a way as to limit the reduction of light and air surrounding, and physical isolation of or intrusion on, Landmarks and Historic Buildings, and to minimize the shadow impact on their facades.
7. Boston Civic Design Commission Review. Each Proposed Project shall be subject to review by the Boston Civic Design Commission, in accordance with the provisions of Article 28.
8. Pedestrian Connections. In the Chinatown Gateway Special Study Area and the Turnpike Air-Rights Special Study Area, each Proposed Project shall establish safe and convenient pedestrian connections with the existing Chinatown commercial and residential areas through building scale, character, uses, and, where applicable, pedestrian access along Hudson Street, Kneeland Street, and Marginal Street.

(↓As amended on May 9, 1996.)

↓SECTION 43-18. Institutional Master Plan Review Requirement.

Requirements for the review and approval of Institutional Master Plans are set forth in Article 80 (Development Review and Approval) for Institutional Master Plan Review. See Section 80D-2 (Applicability of Institutional Master Plan Review) concerning the applicability of such requirements, regulations applicable to exempt projects, exemptions for small institutions, and election to include exempt projects in an Institutional Master Plan.

1. Applicability of Requirement. A Proposed Project which includes one or more Institutional Uses, as identified in Appendix B hereto, shall be consistent with an approved Institutional Master Plan, within the meaning of paragraph 2(a) (Institutional Master Plan Review: Review Requirement) of Section 80D-2, unless such Proposed Project is exempt from such

requirement, pursuant to subsection 2 (Exempt Projects) of this Section 43-18.

2. Exempt Projects. A Proposed Project that would otherwise be subject to the Institutional Master Plan Review requirement set forth in subsection 1 of this Section 43-18 is exempt from such requirement if such Proposed Project is described in paragraph (a) (Certain Interior Alterations) or paragraph (b) (Special Provision for Conditional Approval of Certain Projects in Absence of Institutional Master Plan) of this Section 43-18.2.
 - (a) Certain Interior Alterations. The provisions of this Section 43-18 shall not, in any event, apply to a Proposed Project limited to interior alterations affecting a gross floor area of fifty thousand (50,000) square feet or less and not involving a change of use or increase in FAR; provided, however, that the provisions of this Section 43-18 shall apply to a Proposed Project involving any interior alterations located on the ground floor materially affecting pedestrian access routes provided for in the Institutional Master Plan or materially affecting then existing space devoted to Retail, Service, Restaurant, Cultural, or Community Uses. For the limited purpose of applying the gross floor area threshold of the preceding sentence, a series of Proposed Projects on the same or contiguous lots, undertaken by the Applicant or affiliates of the Applicant pursuant to building permits issued within any period of twenty-four (24) consecutive months, shall be deemed to be a single Proposed Project.
 - (b) Special Provision for Conditional Approval of Certain Projects in Absence of Institutional Master Plan. If no applicable current Institutional Master Plan has been approved, a Proposed Project containing less than five thousand (5,000) square feet of gross floor area devoted to one or more Institutional Uses otherwise allowed for the location, pursuant to Section 43-19, may be conditionally permitted, in accordance with the provisions of Article 6, but if an applicable current Institutional Master Plan has been approved, then such a Proposed Project must be in conformity with said current Institutional Master Plan. For the purpose hereof, a "current" Institutional Master Plan shall mean an Institutional Master Plan approved, either originally or in amended form, by the Boston Redevelopment Authority and the Zoning Commission, in accordance with this Section 43-18, not more than four (4) years prior to the date on which a Certification of Consistency under Institutional Master Plan Review has been issued for such Proposed Project, pursuant to Section 80D-10.

3. Content of Institutional Master Plan: Additional Elements. Pursuant to subsection 10 (Additional Elements) of Section 80D-3 (Scope of Institutional Master Plan Review; Content of Institutional Master Plans), the additional elements required in an Institutional Master Plan may include, but need not be limited to, the elements set forth in this subsection 3 of Section 43-18 to the extent that the Boston Redevelopment Authority determines that such elements are necessary, for city planning purposes, to judge the impact on the surrounding neighborhoods of the Institution's current and future Proposed Projects together with other development reasonably anticipated to occur.

(a) Alternative Development Scenarios

An identification and analysis of alternative development scenarios and their impacts, including alternative sites for proposed future projects, and sites not currently owned by the institution. The Plan should define functions and services which could possibly be decentralized to minimize impacts upon the most intensely utilized areas of the institution's campus and surrounding geographical area.

(b) Schedule of Proposed Projects

A schedule and estimated timetable for current and future proposed projects, and associated mitigation measures to alleviate project impacts, particularly regarding transportation impacts.

(c) Institutional Transportation and Parking Management and Mitigation Plan

In the Institutional Transportation and Parking Management and Mitigation Plan, described in Section 80D-3.5:

- i. An analysis of the cumulative impacts of all projects proposed in the Institutional Master Plan on the transportation network, taking into account the cumulative impacts of other foreseeable projects, and a statement of measures proposed to mitigate, limit, or minimize, to the extent economically feasible, any adverse impact on the transportation network reasonably attributable to the projects proposed in the Institutional Master Plan; and
- ii. An analysis identifying the demand created by projects proposed in the Institutional Master Plan for tenant, commuter, and short- and long-term visitor parking, nontenant parking, and evening and weekend parking, the impact of such parking needs

on the available parking supply in Chinatown and adjacent neighborhoods, and the manner in which the institution proposes to meet demand reasonably attributable to the projects proposed in the Institutional Master Plan, taking into account the City's policy of encouraging use of transportation modes other than single-occupant private automobiles.

(d) Pedestrian Access

A definition of the pedestrian circulation system to be provided through the campus of the institution, including access to public facilities, including but not limited to public open spaces. Such pedestrian access system shall include appropriate signage, benches, and other amenities to indicate the public nature of the system.

(e) Housing Analysis

An identification of the impacts of the proposed future projects on city and neighborhood housing, and an analysis of possible mitigative measures to address these impacts upon the neighborhood housing supply.

(f) Environmental Analysis

An identification of the impact of proposed future projects on the environment, and an analysis of mitigative measures to be undertaken to address such environmental impacts.

(g) Urban Design Analysis

An analysis of the urban design aspects and impacts of proposed future projects. Said analysis shall include a definition of the major design elements of new or renovated buildings and associated landscaping, open space, and pedestrian access improvements, and their compatibility with existing buildings and improvements.

(h) Child Care Analysis

An analysis of child care needs created by proposed future projects, and a description of mitigative steps to be taken to address such newly created needs.

(i) Job Training Analysis

A description of the permanent employment to be created by proposed future projects, an analysis of the job skills necessary for such employment opportunities, and a definition of steps to be taken to work with Boston schools to train Boston students to achieve these skills.

(j) Impacts of Other Projects

An analysis of the impacts of other known, proposed future projects within the neighborhood within which the institution is located. Such analysis shall include projects identified by the Boston Redevelopment Authority and other projects which the institution is or reasonably should be aware of. Such analysis shall include a definition of the cumulative impacts of all known projects proposed for the surrounding neighborhood from all of the aforementioned perspectives of concern.

(k) Community Benefits Plan

An identification of measures to minimize or mitigate detrimental and adverse impacts of proposed future projects on communities and neighborhoods within which proposed future projects are located.

(l) Community Review

A description of the proposed process and timetable for community review of each proposed future project, including a statement of written information to be provided to the neighborhood group as that term is defined in Subsection 2 below and other citizen group, in connection with the review process.

4. Time for Renewal of Institutional Master Plan. An Institutional Master Plan Notification Form (IMP NF) seeking renewal of an Institutional Master Plan pursuant to Section 80D-8 (Renewal of Institutional Master Plan) shall be filed on or before the fourth (4th) anniversary of the date of the later of: (a) the Zoning Commission's approval of the original Institutional Master Plan, or (b) the most recent renewal thereof by the Zoning Commission (or by the Boston Redevelopment Authority, if no Zoning Commission review was required).

(↑ As amended on May 9, 1996.)

↑SECTION 43-19. **Chinatown District Use Regulations.** In the Chinatown District the use of land and structures is hereby regulated as provided in this Section. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 43-19.

1. Neighborhood Business Opportunities. An Applicant for any Proposed Project with fifty thousand (50,000) or more square feet of floor area available for lease, other than for residential purposes, shall use Best Efforts, as hereinafter defined, to market space within the Proposed Project to Neighborhood Business Establishments from Chinatown, on terms comparable to those for other potential users of such space, as detailed in the remainder of this paragraph, for a period of not less than ten (10) years. Such Best Efforts shall be detailed in a Neighborhood Business Opportunity Plan, prepared in accordance with regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing, and approved by the Boston Redevelopment Authority. The Neighborhood Business Opportunity Plan shall take into account the size of the Proposed Project; the minimum user size (i.e., the number of square feet of each type of space) to which the Applicant contemplates leasing at identified stages of its marketing effort; and the uses permitted by the Applicant's leasing plan for office and retail space.

For the purpose of this Subsection 1, "Best Efforts" means reliance on traditional methods of leasing; and, whenever those traditional methods prove insufficient to afford a meaningful opportunity to Neighborhood Business Establishments to lease space within the Proposed Project, subject to the provisions of this Subsection, the Applicant shall take other affirmative measures to afford such an opportunity. The measures to be taken to satisfy the "Best Efforts" standard shall be in conformity with written regulations, referenced in the immediately preceding paragraph, and consistent with the applicable Neighborhood Business Opportunity Plan as approved by the Boston Redevelopment Authority. A Neighborhood Business Opportunity Plan shall not require that Applicant lease space to Neighborhood Business Establishments under any terms or conditions that are in any respect inconsistent with those terms and conditions generally applicable to other lessees in the Proposed Project.

2. Inclusion of Day Care Facilities. The provisions of this Subsection 2 apply only to Proposed Projects to exceed a building height of eighty (80) feet, or an FAR of six (6), or both. Any Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses or Cultural Uses, which equals or exceeds one hundred thousand (100,000) square feet, shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table D of this Section, except that the day care facilities requirement for that portion of any Proposed Project

consisting of Institutional Uses located in the Institutional Subdistrict and subject to an approved Institutional Master Plan shall be as set forth in said Institutional Master Plan. For the purposes of this Subsection 2 and Table D only, floor area devoted exclusively to hotel or motel uses shall be multiplied by 0.5 before being used in any calculation of required day care facilities. An Applicant for a Proposed Project subject to the provisions of this paragraph may fulfill its obligations under this Subsection by either (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project within the Chinatown District; provided that any Proposed Project subject to the provisions of this Subsection shall devote to day care facilities located on site an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this Subsection shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this Subsection, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE D

Provision of Day Care Facilities

<u>Size of Proposed Project (Gross Square Feet)</u>	<u>Minimum Day Care Facilities (Gross Square Feet)</u>
100,000 up to 200,000	2% of gross floor area
200,000 up to 500,000	4,000
500,000 up to 1,000,000	8,000
More than 1,000,000	12,000

3. Expansion of Existing Businesses in Protection Areas and Commercial Chinatown Subdistrict. Any Proposed Project for the expansion of an existing use in the Historic Chinatown Protection Area, Liberty Tree Protection Area, Beach-Knapp Protection Area, or Commercial Chinatown Subdistrict, which use has an existing gross floor area of four thousand (4,000) square feet or less and is identified as allowed in Table E below, may be expanded to more than four thousand (4,000) square feet notwithstanding that such use, as thus expanded, is identified as conditional or forbidden in Table E. If such use, as thus expanded, is identified as forbidden in Table E, then after such expansion, such use

shall be treated as a nonconforming use, subject to the provisions of Article 9. Further, any such expansion shall be subject to the dimensional requirements of this Article and Code, including without limitation Section 13-3.

4. General Use Restrictions. Within the Chinatown District, the uses, described in greater detail in Appendix B, are allowed, conditional, or forbidden as set forth in Table E and Table F of this Article. (See Appendix D for Table E and Table F.) Certain uses are regulated by floor, and are set forth in Table E. Certain uses are not regulated by floor and are set forth in Table F. Uses identified in Table E and located in the basement of a building are regulated as provided in Table E for first floor uses. Uses identified in Table E and located on the fourth and higher floors are regulated as provided in Table E for third floor uses. No land or structure in the Chinatown District shall be erected, used, or arranged or designed to be used, in whole or in part, unless, for the proposed location of such use, the use is identified as "A" (allowed) in Table E or Table F or, subject to the provisions of Article 6, such use is identified as "C" (conditional) in Table E or F. Any use identified as "F" (forbidden) in Table F for the proposed location of such use is forbidden in such location. Any use not included in Table E or F is forbidden for the Chinatown District.
5. Allowed Accessory Uses. The following uses are allowed as accessory uses subject to the limitations and restrictions of Article 10: (a) a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use, or a group care residence, limited; (b) a swimming pool or tennis court; (c) the storage of flammable liquids and gases incidental to a lawful use; (d) the keeping of animals, other than household pets, provided that every enclosure is sufficient to prevent a nuisance to any adjacent residences or eleemosynary institutions; (e) an office, within a main building, of a professional person who resides in such building; (f) an occupation for profit customarily carried on in a dwelling unit by a person residing within; (g) the maintenance and operation of not more than four (4) amusement game machines accessory to eating and drinking establishments; (h) in hospitals with more than fifty (50) beds, and in educational institutions with more than four hundred (400) full-time students, incidental uses and services ordinarily found in connection therewith and primarily for the patients and staff or students and faculty, when conducted wholly within a building and entered solely from within the building where there is but one (1) building on the lot or from an entrance not directly facing a street or lot line where there is more than one (1) building on the lot; (i) the storage of flammable liquids and gases incidental to a lawful use; (j) any use ancillary to, and ordinarily incident to, a lawful main use, provided that any such use is not a use expressly

forbidden in such location and subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory.

6. Conditional Accessory Uses. The following uses are conditional accessory uses, subject to the provisions of Article 6 and Article 10: (a) a garage or parking space for occupants, employees, customers, students, and visitors, if such use is not accessory to a residential use, or a group care residence, limited; (b) a dormitory, provided that such use is accessory to an allowed or conditional institutional use; (c) the keeping of laboratory animals incidental to an allowed or conditional institutional use, provided that all resulting noise, dust, fumes, gases, odors, and refuse matter are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to health or safety; and (d) the manufacture, assembly, or packaging of products sold on the lot.

(↑As amended on September 30, 1993, October 6, 1994, March 6, 1995, and September 20 and November 21, 1996.)

↓SECTION 43-20. **Specific Design Requirements.** All Proposed Projects within the Chinatown District shall comply with the specific design requirements established in this Section, subject to the provisions of Article 6A.

1. Street Wall Continuity. A Street Wall of any Proposed Project shall be built to be coextensive with the building line, as defined in clause (7A) of Section 2-1, of the block on which the Street Wall faces. If there is no determinable building line of said block, then said Street Wall shall be built at a depth from the curb line equal to that of the building line farthest from the curb line of the two (2) blocks adjacent to said block, facing onto the same street. If there is no determinable building line of either of said adjacent blocks, then (a) if the Proposed Project is subject to or has elected to comply with Large Project Review, an appropriate Street Wall location shall be determined through such review; (b) otherwise, the Proposed Project shall be deemed subject to the Design Component of Small Project Review for the limited purpose of determining an appropriate Street Wall location. The foregoing notwithstanding, within a PDA, a Street Wall of any Proposed Project shall be built at the depth from the curb line provided for in the applicable Development Plan. A Proposed Project shall comply with the requirements of this Subsection 1 with respect to each facade facing a public street, but excluding alleys and private ways.

Except as otherwise provided in this Subsection 1, Street Walls shall be continuous across a lot. However, design articulation involving deviations from the Street Wall Plane of two (2) feet or less shall be permitted across the Street Wall. Further, larger recesses and bays in Street Walls shall be permitted as follows. For Proposed Projects not subject to nor electing to

comply with Large Project Review, recesses in Street Walls shall be permitted as set forth in Table G and bay windows shall be permitted to extend from the Street Wall Plane above the ground-floor ceiling height, provided that such bay windows do not affect more than forty percent (40%) of the Street Wall Plane. For Proposed Projects that are subject to or have elected to comply with Large Project Review, recesses and bays may be permitted if appropriate to the creation of visually interesting designs or the accommodation of a specific ground level function, provided that the facade remains compatible with its historical and architectural surroundings and visual continuity in the block front is preserved, as determined by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review.

The linear frontage of any single use of the first floor of any building on a street, excluding alleys, shall not exceed forty (40) feet in the Historic Chinatown Protection Area, Liberty Tree Protection Area, and Beach/Knapp Protection Area and fifty (50) feet in the Commercial Chinatown Subdistrict. For the purposes of the preceding sentence, separate business operations shall be deemed distinct uses notwithstanding that they may be classified under the same use category. The maximum allowed linear frontage on a street of any individual entrance to an off-street parking or loading area of a Proposed Project in the Chinatown District is thirty (30) feet. The maximum allowed linear frontage on a street of any office, hotel, motel, or residential lobby of a Proposed Project in the Chinatown District, excluding areas within which PDAs are allowed and excluding the Institutional Subdistrict, is fifteen (15) feet.

TABLE G

Permitted Street Wall Recesses*

<u>Location</u>	<u>Maximum Depth from the Street Wall Plane</u>	<u>Maximum Aggregate Surface Area</u>
Below ground floor ceiling height	Two (2) feet	Fifty percent (50%)
	Four (4) feet	Thirty percent (30%)
Above ground floor ceiling height	Ten (10) feet	Fifty percent (50%)
	Fifteen (15) feet	Thirty percent (30%)

* The "ground floor ceiling height" means the height of the underside of the floor structure of the second floor. The "maximum aggregate surface area" means the portion, expressed as a percentage, of the surface area of the specified part of the Street Wall Plane (i.e., above the ground floor ceiling height or below) affected by recesses. The areas within which recesses are permitted are not cumulative; e.g., above the ground floor ceiling height, the maximum aggregate surface area that may be affected by recesses, whether of 10 or 15 feet, is 50%.

2. Street Wall Height. The Street Wall Height of Proposed Projects within the Chinatown District shall not exceed the limits set forth in Table H, except that within a PDA the Street Wall Height shall be as set forth in the approved Development Plan. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 43-20.

TABLE H

Maximum Street Wall Heights

<u>Location</u>	<u>Maximum Street Wall Height</u>
<u>North of Kneeland Street</u>	
Facade on north side of Kneeland Street	80'
Facade on south side of Essex Street	80'
Facade on east side of Washington Street	80'
Facade on west side of Central Artery Corridor	80'
Facade on east or west side of Harrison Street	80'
Elsewhere north of Kneeland Street	65'
<u>South of Kneeland Street</u>	
Facade on south side of Kneeland Street	125'
Elsewhere south of Kneeland Street	125'

3. Street Wall Transparency Regulations. The provisions of this Subsection 3 shall apply only to any Proposed Project with a gross floor area of five thousand (5,000) or more square feet or and only to Street Walls facing onto Beach Street and Harrison Avenue in the Historic Chinatown Protection Area, Liberty Tree Protection Area, Beach/Knapp Protection Area and Commercial Chinatown Subdistrict. Not less than sixty percent (60%) of the Display Window Area of a Proposed Project, excluding any portion of the Display Window Area occupied by a pedestrian entrance or entrance/exit to an off-street parking or loading area shall be glazed and transparent, provided that if the Proposed Project is subject to or has elected to comply with Large Project Review, the numerical standard may be waived if the extent and design of glazing and pedestrian entrances is such as will encourage active pedestrian use of the street and promote visual interest in the facade, as determined by the Boston Redevelopment Authority in such review pursuant to Article 80. Lettering and designs painted on not more than forty percent (40%) of the required glazed surface area shall not be deemed to be inconsistent with the aforesaid glazing and transparency requirement. The foregoing shall not, however, affect or limit the applicability of Article 11, Signs, to such painted lettering or designs.

4. Setback Requirements.

- (a) Sky Plane Setbacks. Other than decorative cornices and other surface ornamentation, every portion of a Proposed Project (including, but not limited to, mechanical equipment) above the Street Wall Height of such Proposed Project shall be set back by not less than five (5) feet at the Street Wall Heights set forth in Subsection 2 of this Section 43-20 except that sky plane setbacks in a PDA shall be as set forth in the approved Development Plan. Portions of a Proposed Project more than one hundred fifty-five (155) feet high should be treated in a manner to create a visually distinctive roof or other termination of the facade of the Proposed Project. The Sky Plane Setback provisions established in this paragraph shall not be applicable to the extent that, as a consequence of such provisions, the maximum possible gross floor area for any floor of a Proposed Project would be less than nine thousand (9,000) square feet.
- (b) Entrance Elements. In order to permit the creation of a distinctive entrance element, and notwithstanding any contrary provision of paragraph (a) of this subsection 4, a portion of the front facade of a building may be built to the one hundred fifty-five (155) foot level (but, in any event, not more than the applicable maximum permitted building height) without setbacks provided that such portion has a maximum horizontal dimension of 35 feet.

(↑As amended on May 9, 1996.)

↓SECTION 43-21. **Design Review and District Design Guidelines for Beach/Knapp and Liberty Tree Protection Areas.** Within the protection areas depicted on Map 1G of this Code as the Beach/Knapp Protection Area and the Liberty Tree Protection Area, any Proposed Project for exterior alteration or construction shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component). Notwithstanding any contrary provision of Section 80E-2.1, such review shall be applicable whether or not any such Proposed Project is subject to the jurisdiction of the Boston Landmarks Commission or any other architectural board or commission having design review authority and established pursuant to a general or special law of the Commonwealth of Massachusetts.

To be consistent with the design guidelines established in this Section 43-21, a Proposed Project shall be designed such that the exterior proportions, scale, massing, window treatment, materials, colors, and architectural detailing are compatible with the observable historical and architectural character of other buildings in the area within which the Proposed Project is located, and with streets and open spaces to which it is visually related, as identified in the Chinatown Community Plan. To preserve a lot-by-

lot appearance, facade ornamentation should be varied, and facades should be divided into modules or bays to reflect the lot width established by historic buildings within each area and to continue the established bay rhythm of each block.

1. Special Facade Considerations. In reaching its decision, pursuant to Section 80E-4.1 (Standards for Small Project Review Approval: Design Component), the Boston Redevelopment Authority shall consider whether the Proposed Project will have an adverse effect on: (a) the character of the Beach/Knapp Protection Area as an area within which brick facades predominate; (b) the character of the Liberty Tree Protection Area as an area within which ornate facades and hip, gabled, and mansard roofs are distinctive elements; or (c) the lot-by-lot appearance of the district.

(↑As amended on May 9, 1996.)

SECTION 43-22. Restrictions on Change of Use or Occupancy of Theaters. The Commissioner of the Inspectional Services Department shall not issue a change of use or occupancy permit for any Theater within the Chinatown District, as identified in the Chinatown Community Plan, except in accordance with the provisions of this Section.

1. Demolition of Unsafe Theaters. The Commissioner of the Inspectional Services Department may issue a demolition permit where the Theater or building is unsafe and demolition is required pursuant to the provisions of the Commonwealth of Massachusetts State Building Code.
2. Authorized Change of Use or Occupancy of Theaters. Excepting the provisions of Subsection 1 of this Section, the Commissioner of the Inspectional Services Department shall issue a change of use or occupancy permit for any Theater within the Chinatown District under the provisions of Article 6 only if the Board of Appeal finds, after reviewing the recommendations, if any, of appropriate City departments and agencies, and appropriate community and neighborhood organizations in the Midtown and Chinatown areas, and in addition to all other conditions required under Section 6-3, Section 6-3A, and Section 6-4, where applicable, that:
 - (a) change of use or occupancy of the Theater structure will not unduly diminish the historic character of the Washington Street as a cultural, entertainment, and theatrical showcase, taking into consideration:
 - (i) current physical characteristics of the Theater that affect its suitability for use as a Theater, including but not limited to seating capacity, interior configuration, and location;
 - (ii) history of its use as a Theater;
 - (iii) the likelihood of its future use for Theater production; and
 - (iv) the Applicant's plans for replacement of the Theater structure with performing arts facilities supportive of the objectives and specifications of the Chinatown Community Plan and the Midtown Cultural District Plan. In its approval of a conditional

use under this Subsection 2, the Board of Appeal shall attach as conditions and safeguards, at a minimum, that: (b) the Applicant for any Proposed Project on the lot containing a portion or all of the former site of the Theater either (i) replace that Theater with a fully equipped new Theater or other cultural facility of a condition, size, and type which is appropriate, under the circumstances pertaining at the time of the permit application, to contribute to the balance of cultural facilities responsive to the needs of the Chinatown District and Midtown Cultural District, as identified in the Chinatown Community Plan and Midtown Cultural District Plan; or (ii) substantially rehabilitate or cause the substantial rehabilitation of an existing Theater, in accordance with the provisions of Subsection 3 of this Section 43-22; and (c) the Applicant provide evidence of a long-term commitment by the Applicant itself or a third party either (i) to use the Theater or cultural facility in accordance with the Chinatown Community Plan and Midtown Cultural District Plan or (ii) to lease or otherwise transfer such Theater or cultural facility for such use (which may include a lease or transfer to the City of Boston or its designee). In the case of a new Theater, the new Theater must provide for sufficient facilities to support Theater operations, such as administrative offices, rehearsal studio space, dressing room/green room space, and storage space, as identified in the Midtown Cultural District Plan. In the case of a Theater in a building or an interior designated as a Landmark, such permit must also be authorized by the Boston Landmarks Commission, in accordance with Chapter 772 of the Acts of 1975, as amended from time to time. The Applicant shall also enter into an agreement for substantial rehabilitation of an existing Theater, as detailed in Section 38-25, where applicable.

3. Qualification of Substantial Rehabilitation of a Theater. Substantial rehabilitation of an existing Theater qualifying for approval under this Section 43-22 consists of: (a) major interior or structural changes for the purpose of improving the Theater's design and its viability for Theater use, including an equipment level commensurate with its anticipated use, as set forth in the Chinatown Community Plan; or (b) historic restoration of the interior of the Theater. Major exterior renovations and improvements, such as a facade restoration, may also be included in qualifying as substantial rehabilitation. Substantial rehabilitation to the interior of a Theater may include, without limitation, such work as expanding stage or wings, reraking the orchestra, increasing rehearsal, dressing room, or lobby space, or historic restoration. It may also include conversion to Theater use of a original Theater currently in other use. Substantial rehabilitation does not mean normal Theater maintenance, parking, or improvements to mechanical systems alone.

SECTION 43-23. Off-Street Parking. The provisions of Article 23, Off-Street Parking, shall govern any Proposed Project in the Chinatown District, except a

Proposed Project in a PDA for which off-street parking shall be provided as required in the applicable Development Plan. The off-street parking requirements stated as applicable to a specific floor area ratio set forth in Table B of Section 13-1, including the exemption from the off-street parking requirement set forth in Section 23-6(a), shall also apply to the same floor area ratio set forth in this Article. Where a use provided for in this Article is not included in any use item number listed in Article 23, off-street parking facilities shall be provided in accordance with the requirements for the use item number listed in Article 23 which is most similar to such use. The foregoing notwithstanding, in no event shall any Proposed Project be required to provide parking in excess of that permitted under any applicable state or federal parking freeze or similar law.

SECTION 43-24. Adult Entertainment District. Within the Adult Entertainment District, Adult Entertainment Uses, identified in Appendix B, are allowed, and the prohibition of moving or flashing signs in Section 11-2 does not apply.

↓ **SECTION 43-25. Off-Street Loading.** Article 24 provides the regulations governing the provision and design of off-street loading facilities for the use of any structure or land in the Chinatown District not subject to Large Project Review. Where a use provided for in this Article is not included in any use item number listed in Article 24, off-street loading facilities shall be provided in accordance with the requirements for the use item number listed in Article 24 which is most similar to such use. The provision and design of off-street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review.

(↓ As amended on May 9, 1996.)

SECTION 43-26. Regulations. The Boston Redevelopment Authority may promulgate regulations to administer this Article.

SECTION 43-27. Severability. The provisions of this Article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

SECTION 43-28. Appendices. The following appendices to this Article are incorporated herein:

1. Appendix A - Definitions
2. Appendix B - Use Categories
3. Appendix C - Eligible Theaters, Historic Buildings, and Landmarks
4. Appendix D - General Use Restrictions
 - a. Table E - Uses Regulated by Floor
 - b. Table F - Uses Not Regulated by Floor

APPENDIX A to ARTICLE 43

Definitions

For the purposes of this article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Adjusted Income" is defined as it is in 24 CFR 813.102, as amended, or as set forth in regulations adopted in accordance with Section 43-24.
2. "Affordable" means, in the case of an owner-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household for mortgage and insurance payments, real estate taxes, and condominium fees of not more than thirty percent (30%) of its Adjusted Income to occupy the unit, and, in the case of a renter-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate--Income Household for rent payments of not more than thirty percent (30%) of its Adjusted Income to occupy the unit.
3. "Annual Income" is defined as it is in 24 CFR 813.106, as amended, or as set forth in regulations adopted in accordance with Section 43-24.
4. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 43-4, or the authorized agent of any such person or entity.
5. "Best Efforts" has the meaning ascribed in Section 43-19.1.
- ↑6. "Chinatown" or "Chinatown District" means the area depicted on a map entitled "Map 1G Chinatown District" of the series of maps entitled "Zoning Districts - City of Boston" as amended.

(↑As amended on July 31, 1997.)
7. "Chinatown Community Plan" means the plan of the same name, adopted by the Boston Redevelopment Authority on March 29, 1990.
8. "Chinatown District Zoning Plan" means the regulations imposed by this article.
9. "Display Window Area" means that portion of the Street Wall between (i) a height of two (2) feet above the ground floor and (ii) the height of the underside of the floor structure of the second floor, or fourteen (14) feet, whichever is less.
10. "FAR" means Floor Area Ratio, as defined in clause (20) of Section 2-1.

APPENDIX A to ARTICLE 43 (continued)

11. "Ground Level Uses" has the meaning ascribed in Section 43-19.3.
12. "Historic Building" means a building listed on the Massachusetts Register of Historic Places.
13. "Landmark" means any building or structure designated a landmark pursuant to Chapter 772 of the Acts of 1975, as amended.
14. "Level of Service" means the functional capacity of a traffic intersection as measured by the ratio between the volume of vehicles passing through the intersection and the capacity of the intersection.
15. "Low-Income Household" means any household whose Annual Income does not exceed 50% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
16. "Map 1G" means Map 1G Chinatown District (supplemental to 'Map 1 Boston Proper') of the series of maps entitled "Zoning Districts - City of Boston," as amended.
17. "Median Gross Income" is defined as it is by the United States Department of Housing and Urban Development, pursuant to 24 CFR Section 813.102, as amended, or as set forth in regulations adopted in accordance with Section 43-16.
18. "Moderate-Income Household" means any household whose Annual Income does not exceed 80% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
19. "Neighborhood Business Establishments" means a business firm with fixed offices or distribution points located within the boundaries of the Chinatown District and with a business address within such boundaries. A residential address may be used to establish status as a "Neighborhood Business Establishment."
20. "Peak Hours" means the periods from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday.
21. "Proposed Project" means the demolition, erection, reconstruction, structural alteration, or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit. A Proposed Project may proceed in phases and may include more than one building, structure, or use.

APPENDIX A to ARTICLE 43 (continued)

22. "Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the Commonwealth of Massachusetts, or one or more political subdivisions of the Commonwealth, or of the United States.
23. "State Building Code" means the state building code and amendments and rules and regulations thereto as promulgated by the board of building regulations under sections ninety-three, ninety-four, and ninety-five of Chapter One Hundred Forty Three of the General Laws.
24. "Street Wall" means the portion of the exterior wall (including recesses, bays, windows, doors, and other features) of a Proposed Project that fronts on a public street (excluding public alleys) and is below the Street Wall Height, determined pursuant to Section 43-20.
25. "Street Wall Plane" means the planar surface of the Street Wall (disregarding recesses, bays, windows, doors, etc.) required pursuant to Section 43-20.
26. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the last occupied floor shall not exceed the specified height limit for the applicable district or subdistrict by more than the lesser of (i) ten (10) feet or (ii) two-thirds of the average floor-to-floor height of the building, excluding the ground floor. "Substantial Accord" shall not be interpreted as allowing a Proposed Project to exceed the maximum permitted FAR.
27. "Theater" means a facility equipped for the production and presentation of performing and visual arts events.
28. "Underlying Zoning" means all zoning regulations, with the exception of this article, which are contained in this code
29. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

↓ APPENDIX B to ARTICLE 43

Use Categories

The following uses are regulated pursuant to Section 43-19.

Adult Entertainment Uses. As set forth in Use Item No. 34A and No. 38A of Table A of Section 8-7, adult entertainment uses shall be allowed only within the Adult Entertainment District, established pursuant to Section 3-1A by Map Amendment No. 130.

Community Retail Uses. Store primarily serving the retail business needs of the Chinatown Community, including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, packaged alcoholic beverages, prescription drugs, health and beauty products, tobacco products, clothing, drygoods, books, flowers, paint, hardware and minor household appliances.

Community Uses. A facility which provides educational, recreational, advocacy, informational, consulting, or support services on a non-profit basis to the community, in areas such as housing, employment, job training, law, health care, child care, and senior care.

Cultural Uses. Art galleries (both commercial and non-profit); music, dancing, visual arts, performance or theatrical studios.

Day Care Uses. Day care facility.

Educational Uses. Nursery school; kindergarten; or elementary or secondary school; trade, professional, or other school; adult education facility.

Entertainment Uses. Auditorium; theater, including a motion picture theater but not a drive-in theater; concert hall; dance hall; bowling alley; skating rink; pool room; billiard parlor; or any commercial establishment maintaining and operating any amusement game machine, other than as an accessory use.

General Retail Uses. Department store; furniture store; general merchandise mart; or other store serving the general retail business needs of a major part of the city, including accessory storage.

Group Care Residence, General. General group care residence, as defined by Section 2-1(22A).

APPENDIX B to ARTICLE 43 (continued)

↓ Group Residence, Limited. Limited group care residence, as defined by clause (22B) of Section 2-1.

(↓ As amended on February 22, 1991.)

↓ Institutional Uses. College or university granting degrees by authority of the Commonwealth of Massachusetts; hospital or sanatorium; clinic or professional offices accessory to a hospital or sanatorium whether or not on the same lot; clinic not accessory to a main use; scientific research and teaching laboratory; and the creation, assembly, production, and sale of prototypes (including equipment, apparatus, machines, and other devices for research and development), pharmaceuticals, and other products of an Institutional Use, including research and development in the medical, dental, veterinary, and biotechnology fields, whether non-profit or for-profit, or a combination thereof.

(↓ As amended on March 6, 1995 and September 20, 1996.)

Light Manufacturing Uses. The design, development, manufacture, compounding, packaging, processing, fabrication, altering, assembly, repairing, servicing, renting, testing, handling, or transfer of products including electronic and communication products, metal and wood products, office equipment or machinery, pharmaceutical products, or textile products.

↓ Office Uses. Office of professional persons; real estate, insurance, or other agency or government office; post office; bank (other than drive-in bank or similar establishment); offices of cultural groups; or display or sales space of a wholesale, jobbing, or distributing house.

(↓ As amended on September 20, 1996.)

Open Space Uses. Open space in public ownership dedicated to or appropriated for active or passive recreational use or to the conservation of natural resources; or open space in private ownership for active or passive recreational use or for the conservation of natural resources; open space recreational building; or private grounds for games and sports not conducted for profit.

Private Club Uses. Private club operated for members only; quarters of fraternal organizations.

Public Service Uses. Public service pumping station; public service sub-station; automatic telephone exchange; fire station; or police station; provided that the requirements of St. 1956, c.665 s.2, where apt, are met.

APPENDIX B to ARTICLE 43 (continued)

Religious Uses. Place of worship; monastery; convent; or parish house.

Residential Conversion. Any dwelling converted for more families, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.

Residential Uses. Detached dwelling occupied by not more than two families; semi-detached dwelling occupied by not more than two families on each side of a party wall; attached or row house occupied by not more than two families in each structure between fire walls; multi-family dwellings; any dwelling converted for more families, where structures after conversion will conform to the code; lodging or boarding house; apartment hotel; artists' mixed-use; convalescent, nursing or rest home; orphanage.

Residential uses include any Affordable dwelling units, including but not limited to Affordable dwelling units which are rental units, condominiums, or limited equity share cooperatives.

Restaurant Uses. Lunchroom, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, and the sale over the counter, wholly incidental to such restaurant use, of food or dishes prepared on premises for on-or off-premises consumption, ready for take out.

↑Service Uses. Barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or drycleaner; tailor shop; hand laundry; drycleaning shop; check cashing business; or similar use.

(↑ As amended on October 6, 1994)

Special Service Uses. Funeral home; undertaker's establishment; mortuary; animal hospital or clinic; kennel; pound; and poultry shop.

Take-Out Restaurant Uses. Sale over the counter, not wholly incidental to a local retail business or restaurant use, of on-premises prepared food or drink for on- off-premises consumption, if, as so sold, such food or drink is ready for take-out.

Theater Conversion. Change of use or occupancy of a Theater.

Trade Uses. A retail use which provides custom-crafted goods and/or services for sale directly to the consumer, reserving some storefront space for display and retail service, such as a caterer's establishment; food processing establishment; printing shop; taxidermist's shop; upholster's shop; carpenter's shop; electrician's shop; crafts' shop; jeweler's shop; novelty products shop; art metal craft shop; art needle work

APPENDIX B to ARTICLE 43 (continued)

shop; sewing shop; dressmaking shop; fabric or yarn shop; gift shop; clock or watch shop, or repair shop; antique store; appliance repair shop; wallpaper shop; musical instruments repair shop; shoe repair shop; radio and television repair shop; or plumber's shop; or similar use.

Transportation Uses. Bus terminal; bus station; railroad passenger station; motor freight terminal; yard for storing or servicing trucks or buses; rail freight terminal; or storage yard accessory to railroad operation, except such transportation uses are conditional in the Chinatown Gateway Special Study Area.

Vehicular Uses. Repair garage; gasoline service station; car wash; sale of automobiles and trucks where operation is carried on within a structure; outdoor sale or display for sale of new or used motor vehicles; automobile rental agency; or establishment for sale and installation within a building of batteries, seat covers, tires, and similar automotive parts and accessories, except such vehicular uses are conditional in the Chinatown Gateway Special Study Area.

Wholesale Uses. Wholesale business, including accessory storage (other than of flammable liquids, gases and explosives) in roofed structures, except such uses are allowed in the Chinatown Gateway Special Study Area.

Ancillary Uses. Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that, any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.

APPENDIX C to ARTICLE 43

Eligible Theaters, Historic Buildings, and Landmarks

<u>Buildings</u>	<u>Address</u>
1. Liberty Tree	628, 636, 638, 644 Washington
2. Pilgrim Theatre	658 Washington
3. Stuart Theatre	696-702 Washington
4. Center Theatre (Globe Theatre)	688-692 Washington
5. 11-31 Essex Street	11-31 Essex Street
6. Kingston Building	105-107 Essex Street
7. Chinese Merchant Association	20 Hudson Street
8. Auchmuty Building	104-122 Kingston Street
9. 121-127 Kingston Street	121-127 Kingston Street
10. 129-131 Kingston Street	129-131 Kingston Street
11. 4-11 Oxford Place	4-11 Oxford Place
12. 17-23 Beach Street	17-23 Beach Street
13. 25-29 Beach Street	25-29 Beach Street
14. 5 Knapp Street	5 Knapp Street
15. 7 Knapp Street	7 Knapp Street
16. 9-23 Knapp Street	9-23 Knapp Street

APPENDIX D to ARTICLE 43

General Use Restrictions

Appendix D to Article 43 consists of the following tables:

1. TABLE E - Uses Regulated by Floor
2. TABLE F - Uses Not Regulated by Floor

See also Section 43-19.4, General Use Restrictions.

TABLE E

CHINATOWN DISTRICT
Subdistricts/Areas
Uses Regulated by Floor

Floor:	Historic Chinatown			Commercial Chinatown, Liberty Tree, Beach/Knapp			Residential Chinatown			↑ Institutional, Health Sciences		Tyler Street Special Study	Turnpike Special Study	Gateway Special Study
	1	2	3+	1	2	3+	1	2	3+	All		All	All	All
Community Retail Small*	A	A	A	A	A	A	A	C	F	A		A	A	A
Large**	C	A	A	C	A	A	C	F	F	A		A	A	A
Community Uses	A	A	A	A	A	A	A	C ⁽²⁾	C ⁽²⁾	A		A	A	A
Cultural Use	A	A	A	A	A	A	A	C	C	A		A	A	A
Educational Uses Small***	A	A	A	A	A	A	A	A	C	A		A	A	A
Large+	F	A	A	C	A	A	C	C	F	A		A	A	A
General Retail Small*	A	A	A	A	A	A	A	F	F	A		A	A	A
Large**	F	C	F	C	C	C	F	F	F	A		A	A	A
Office Small*	C	A	A	A	A	A	A	A	C	A		A	A	A
Large**	F	C	C	C	C	C	F	F	F	A		C	C	C

TABLE E - Continued

Floor:	Commercial Chinatown, Liberty Tree, Beach/Knapp						↑ Institutional, Health Sciences	Tyler Street Special Study	Turnpike Special Study	Gateway Special Study
	Historic Chinatown			Residential Chinatown						
	1	2	3+	1	2	3+				
Service Small*	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾
Large**	C	A ⁽¹⁾	A ⁽¹⁾	C	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾	A ⁽¹⁾
Take-Out Small*	C	C	F	C	C	F	C	C	C	C
Large**	F	C	F	C	C	C	C	C	C	C
Trade Shop Small*	A	A	A	A	A	A	A	A	A	A
Large**	C	C	F	C	C	C	C	C	C	C

"A" Allowed; "C" Conditional; "F" Forbidden.

↓ As amended on March 6, 1995.

* Total gross floor area not more than 4,000 square feet per use.

** Total gross floor area exceeding 4,000 square feet per use.

*** Schools with no more than 40 students.

+ Schools with more than 40 students.

TABLE E - Continued

(1) Except C for check cashing business.

(As inserted on October 6, 1994 and amended on July 31, 1997.)

(2) Except A in that portion of the Residential Chinatown subdistrict bounded on the east by Tyler Street, on the south by property of Tufts University known as the Posner building, on the west by the Health Sciences subdistrict, and on the north by the property numbered 85 Tyler Street.

(As inserted on March 6, 1995.)

TABLE F

CHINATOWN DISTRICT
Subdistricts/Areas
Uses Not Regulated by Floor

	<u>Historic Chinatown</u>	<u>Commercial Chinatown, Liberty Tree, Beach/Knapp</u>	<u>Residential Chinatown</u>	<u>↑ Institutional, Health Sciences</u>	<u>Tyler Street Special Study</u>	<u>Turnpike Special Study</u>	<u>Gateway Special Study</u>
Adult Entertainment	F	A++	F	F	F	F	F
Day Care	A	A	A	A	A	A	A
Entertainment Uses	C	A	F	C	C	C	A
Group Care Residential-Limited	A	A	A	A	A	A	A
Group Care Residential-General	C	C	C	C	C	C	C
Hotel, Motel Uses	C	C	F	C	C	C	C
Institutional Uses	F	F	F	A+++	A ⁽¹⁾ +++	C+++	C+++
Light Manufacturing	F	C	F	F	F	C	C
Open Space	A	A	A	A	A	A	A
Private Club Uses Only	C	C	C	C	C	C	C
Public Service Uses	C	C	C	C	C	C	C
Religious Uses	A	A	A	A	A	A	A

TABLE F - Continued

	<u>Historic Chinatown</u>	<u>Commercial Chinatown, Liberty Tree, Beach/Knapp</u>	<u>Residential Chinatown</u>	<u>↑ Institutional, Health Sciences</u>	<u>Tyler Street Special Study</u>	<u>Turnpike Special Study</u>	<u>Gateway Special Study</u>
Residential Uses	A	A	A	A	A	A	A
Residential Conversion	C	C	C	C	C	C	C
Restaurant Small*	A	A	C	A	A	A	A
Large**	C	A	C	A	A	C	A
Special Service Uses	C	C	F	C	C	C	C
Supermarket	C	C	C	C	C	C	C
Theater Conversion	A	C	A	A	A	A	A
Transportation Uses	F	F	F	F	F	F	C
Vehicular Uses	F	F	F	F	F	F	C
Wholesale Uses	C	C	C	C	C	C	A

"A" Allowed; "C" Conditional; "F" Forbidden.

↑ As amended on March 6, 1995.

* Total gross floor area not more than 4,000 square feet per use.

** Total gross floor area exceeding 4,000 square feet per use.

TABLE F - Continued

++ Adult Entertainment Uses shall be allowed only within the Adult Entertainment District, established pursuant to Section 3-1A by Map Amendment No. 130.

+++ A Proposed Project which includes one or more Institutional Uses is subject to the provisions of Section 43-18.

(¹) Except C for clinic not accessory to a main use.

(As amended on September 20, 1996.)

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↓ ARTICLE 44

LEATHER DISTRICT

(↓ Article inserted on January 28, 1991*)

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* Date of public notice: November 9, 1990 (see St. 1956, c. 665, s. 5)

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1. Appendix A - Ground Level Uses
2. Appendix B - Definitions

(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this article.)

SECTION 44-1. Statement of Purpose, Goals, and Objectives. The purpose of this article is to establish the zoning regulations for the comprehensive plan for the Leather District as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this Code. The goals and objectives of this Article and the Leather District Plan are to preserve the historic and architectural character of the Leather District; to promote the mixed residential, office, studio, retail, and service uses of the Leather District; and to ensure that new development is compatible with existing buildings in scale, design, and choice of building and decorative materials.

SECTION 44-2. Recognition of the Leather District Plan. In accordance with Section 27D-18 of this Code, which required production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the Leather District (Special Study Area No. 9), the Zoning Commission hereby recognizes the Leather District Plan as the general plan for the Leather District. The Leather District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Leather District. This Article is one of the means of implementing the Leather District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 44-3. Physical Boundaries. The provisions of this Article are applicable only in the Leather District. The boundaries of the Leather District are as shown on a map entitled, "Map 1C Leather District and South Station Economic Development Area (EDA) (supplemental to 'Map 1 Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 44-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Leather District and applies as specified in Section 4-1 regarding the conformity of structures and land to this Code. Exceptions to the provisions of this Article, pursuant to Article 6A, shall not be available except to the extent expressly provided in this Article or Article 6A. Application of the provisions of Article 27D to the Leather District is rescinded, and the Leather District is deleted from the Downtown Interim Planning Overlay District, as of the effective date of this Article, except as provided below. Where conflicts exist between the provisions of this Article and the remainder of the Code, the provisions of this Article shall govern. For the Leather District except where specifically otherwise indicated in this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 24, inclusive, of this Code. The following Proposed Projects, however, are exempt from the provisions of this Article and are governed by the rest of this Code, including Article 27D:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first

notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.

2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

↑SECTION 44-5. **Maximum Building Height and Floor Area Ratio.** Within the Leather District, a maximum building height of eighty (80) feet and a maximum floor area ratio (FAR) of 6 are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of eight (8) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(↑As amended on May 9, 1996.)

SECTION 44-6. **Rooftop Additions within the Leather District.** No roof structure designed or used for human occupancy, access, mechanical systems, or storage shall be erected or enlarged on the roof of any Building within the Leather District, unless after public notice and hearing and subject to Sections 6-2, 6-3, and 6-4 the Board of Appeal grants permission therefor. In reaching its decision, said Board shall consider whether such roof structure is architecturally consistent with the distinctive historical and architectural character of the Leather District. Rooftop additions that align with masonry walls of existing structures should extend masonry materials. Elsewhere, they should use metal and glass wall systems. Materials such as stucco and Glass Fibre Reinforced Concrete (GFRC) are prohibited. The Board of Appeal shall not grant any such appeal for a roof structure that is visible from any point on any public way within the District, as indicated on Map 1C, except that rooftop additions visible from a public way via a sight line down a private way are permissible, with the approval of the Board of Appeal. The Inspectional Services Department shall transmit a copy of the appeal for a conditional use pursuant to this Section 44-6 to the Boston Landmarks Commission. The Boston Landmarks Commission may, within thirty days after the date of such transmittal, file with the Board of Appeal a recommendation, provided that if no such recommendation is received within said thirty days, the Board of Appeal may render its decision without such recommendation.

↑SECTION 44-7. **Specific Design Requirements.** Except as otherwise expressly provided in this Article or this Code, all Proposed Projects within the Leather District shall comply with the specific design requirements established in this Section 44-7, subject to the provisions of Article 6A.

1. Street Wall Continuity. On any street identified in Table B, a Street Wall of any Proposed Project shall be built to be coextensive with the building line as defined in clause 7A of Section 2-1, of the block on which the Street Wall faces. If there is no determinable building line of said block, then said Street Wall shall be built at a depth from the Curb Line equal to that of the building line farthest from the Curb Line of the two blocks adjacent to said block facing onto the same street. If there is no determinable building line of either of said adjacent blocks, then (a) if the Proposed Project is subject to or has elected to comply with Large Project Review, an appropriate Street Wall location shall be determined through such review; (b) otherwise, the location of the Street Wall shall be determined through the Design Component of Small Project Review.

Except as otherwise provided in this Subsection 44-7.1, Street Walls shall be continuous across a lot. However, design articulation involving deviations from the Street Wall Plane of two (2) feet or less shall be permitted across the Street Wall. Further, larger recesses shall be permitted as follows: For Proposed Projects neither subject to nor electing to comply with Large Project Review, recesses in Street Walls shall be permitted as set forth in Table A of this Article or as may be required under law to provide access to physically handicapped individuals. For any Proposed Project that is subject to or has elected to comply with Large Project Review, recesses shall be permitted if appropriate to the creation of visually interesting designs or if necessary to accommodate access to handicapped individuals or to accommodate a specific ground level function, such as a hotel or residential carriageway, provided that the facade remains compatible with its historical and architectural surroundings and visual continuity in the block front is preserved, as determined by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review.

TABLE A

Permitted Street Wall Recesses

<u>Location</u>	<u>Maximum Depth from the Street Wall Plane</u>	<u>Maximum Aggregate Surface Area</u>
Below ground floor ceiling height	Ten (10) feet	Fifty percent (50%)
Above ground floor ceiling height	Ten (10) feet	Fifty percent (50%)
	Fifteen (15) feet	Thirty percent (30%)

The "maximum aggregate surface area" means the portion, expressed as a percentage, of the surface area of the specified part of the Street Wall Plane (i.e., above or below the ground floor ceiling height) affected by recesses. The areas within which recesses are permitted are not cumulative; i.e., the maximum aggregate surface area that may be affected by recesses, whether of 10 or 15 feet, is 50%.

2. Street Wall Height. The Street Wall Height of any Proposed Project within the Leather District shall not exceed eighty (80) feet or the Modal Street Wall Height, whichever is less. The endwall of a street which is a cul-de-sac does not count as a Street Wall for the purposes of this Section 44-7.
3. Display Window Area Regulations. The provisions of this Subsection 44-7.3 apply only to any Proposed Project with a gross floor area of fifty thousand (50,000) square feet or more and only to Street Walls facing onto any of the following streets:

Atlantic Avenue	Lincoln Street
Beach Street	South Street
East Street	Surface Artery Street
Essex Street	Tufts Street
Kneeland Street	

The Display Window Area, excluding any portion occupied by a permitted Lobby Entrance Area or entrance/exit to an off-street parking or loading area, shall be sufficiently and appropriately glazed and transparent, with sufficient individual storefront entrances, to encourage active pedestrian use, as determined by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review. Glazed

portions of the Display Window Area, excluding storefront entrances and Lobby Entrance Areas, shall be used to a depth of at least two (2) feet for (a) the display of goods and services available for purchase on the premises, or (b) the display of exhibits and announcements. However, the provisions of the preceding sentence do not apply to foyer space for cultural uses, restaurants, or other active storefront uses.

4. Sky Plane Setback Requirements. Other than decorative cornices and other surface ornamentation, any portion of a Proposed Project for new construction (including, but not limited to, mechanical equipment and not including rooftop additions), which portion faces a street listed in Table B of this Article, shall be set back by not less than fifteen (15) feet.

TABLE B

Streets on which Sky Plane Setbacks are Required

Atlantic Avenue	Lincoln Street
Beach Street	South Street
East Street	Surface Artery Street
Essex Street	Tufts Street
Kneeland Street	

The Sky Plane Setback provisions established in this Subsection 44-7.4 are not applicable to the extent that, as a consequence of such provisions, the maximum possible gross floor area for any floor of a Proposed Project would be less than fifty percent (50%) of the gross floor area of the highest occupied floor below the Street Wall Height for a project on a Corner Parcel, or less than sixty-seven percent (67%) of the gross floor area of the highest occupied floor below the Street Wall Height for a project not on a Corner Parcel.

(↑As amended on May 9, 1996.)

↑SECTION 44-8. Leather District Design Review and Design Guidelines.

Within the Leather District, any Proposed Project for any of the following shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component):

- (a) A rooftop addition that is not visible from a street within the Leather District;

- (b) the erection of a new building or an addition to or extension of an existing building;
- (c) exterior alteration of an existing building affecting more than five hundred (500) square feet of the Street Wall Facade above the Ground Floor Ceiling Height;
- (d) exterior alteration changing the cornice line, height of the Street Wall or Building Height of an existing building.

Notwithstanding any contrary provision of Section 80E-2.1, such review shall be applicable whether or not any such Proposed Project is subject to the jurisdiction of the Boston Landmarks Commission or any other architectural board or commission having design review authority and established pursuant to a general or special law of the Commonwealth of Massachusetts.

1. Design Guidelines. In reaching its decision, pursuant to the Urban Design Component of Large Project Review or the Design Component of Small Project Review, the Boston Redevelopment Authority shall consider whether the Proposed Project is consistent with the design guidelines herein and the District's historic character and current mixed residential, office, artists' studio, retail, and service uses. In addition, the Boston Redevelopment Authority shall consider whether the Proposed Project meets the following special design considerations; these are intended as recommended guidelines, and original alternatives will be considered provided that they meet the same goals and undergo a public review process.
 - (a) Historic Building Facades. Historic Buildings should be renovated rather than replaced, and existing facades must be used, if reasonably possible, so as to maintain the historic architectural contribution of the District. Existing facade fenestration should be retained and/or restored. In the event that restoration is not possible, replacement units should replicate the essential architectural characteristics of the existing windows, such as mullion depth and width, color, and predominant shadow lines.
 - (b) Compatibility with Historic Context. New buildings, rooftop additions, and facade renovations should be designed so that the exterior proportions, scale, massing, window treatment, materials, colors, and architectural detailing are compatible with the observable architectural character of the existing late-nineteenth-century masonry warehouse structures in the Leather District. To preserve a lot-by-lot appearance, facade ornamentation should be varied, and facades should be divided into modules to reflect the lot width established by

Historic Buildings within the Leather District and to continue the established rhythm of each block.

- (c) Base to Height Ratio. Proposed Projects should be consistent with the Leather District's conglomeration of small building masses which meet the streets with discretely organized facades, each of which contains local symmetries and other ordering principles. Vertically oriented facades, typical but not exclusive in the District, are encouraged.
- (d) Storefront Details and Signage. Granite storefront details should be preserved and restored. Cast iron storefront details and flush painted signs are encouraged.
- (e) Recessed Store Entrances. For all new buildings with a building height of sixty (60) or more feet, entrances to Ground Level Uses should be recessed in a manner consistent with traditional storefront entrances in the Leather District.
- (f) Base and First Floor Cornice Line. New development should have a pronounced cornice line or belt course separating the ground floor from the upper floors and should create a visually strong base.
- (g) Upper Cornice. New structures should have pronounced upper cornices which are consistent with upper cornices on existing structures and which create a sense of finality to the building's top. Typical cornice materials, such as copper or masonry/stone, should be used.
- (h) Solid to Void Ratios. Solid to void ratios should emphasize the strong vertical and horizontal patterns that are characteristic of historic architecture in the District.
- (i) Windows which recede from the face of the building, arched windows or window heads, and windows accented by lintels and sills are encouraged to the extent that they are consistent with and reinforce the architectural and historic character of the District. Large, undifferentiated panes of glass are not appropriate except for storefronts. New masonry window openings in existing buildings are discouraged, particularly to the extent that they are incompatible with the character of the traditional building facades in the District.
- (j) Rooftop Mechanical Units. Rooftop mechanical units must be located so as not to be visible from a public way within the District as indicated on Map 1C, except that units which are visible from a public

way via a sight line down a private way are permissible, with approval of the Board of Appeal.

- (k) Building Materials. Primary building materials should be masonry, including any of the following: brick, limestone, terra cotta, sandstone, and granite. New materials (e.g., architectural precast concrete) should be consistent in surface texture and color with existing traditional materials.

(↑As amended on May 9, 1996 and July 31, 1997.)

SECTION 44-9. Establishment of Planned Development Areas Prohibited. Establishment of Planned Development Areas, as described in Section 3-1A.a, is prohibited in the Leather District.

↑**SECTION 44-10. Leather District Use Regulations.** In the Leather District, the use of land and structures is regulated as provided in this Section 44-10. The provisions of Article 8 apply only as specified in this Section, except that Section 8-6 applies. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section.

1. Inclusion of Day Care Facilities. The provisions of this Section apply only to Proposed Projects which exceed a building height of eighty (80) feet or an FAR of six (6) or both. Any Proposed Project having a gross floor area (not including the floor area devoted to Residential Uses, Community Uses, or Cultural Uses, as those uses are described in Subsection 4 of this Section 44-10), which equals or exceeds one hundred thousand (100,000) square feet shall devote to day care facilities an amount of floor area equal to the amount listed below in Table D of this Article. For the purposes of this Subsection 44-10.2 and Table D only, floor area devoted exclusively to hotel or motel uses shall be multiplied by 0.5 before being used in the calculation of required day care facilities. An Applicant for a Proposed Project subject to the provisions of this Subsection may fulfill its obligations under this Subsection by (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project, within the Leather District, the South Station Economic Development Area, or Chinatown. Any Proposed Project subject to the provisions of this Subsection shall devote to day care facilities located on site an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this Subsection shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such

facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE D

Provision of Day Care Facilities

<u>Size of Proposed Project (Gross Floor Area)</u>	<u>Minimum Day Care Facilities (Gross Floor Area)</u>
100,000 up to 200,000 sq.ft.	2% of gross floor area
200,001 up to 500,000 sq.ft.	4,000 sq.ft.
500,001 up to 1,000,000 sq.ft.	8,000 sq.ft.
More than 1,000,000 sq.ft.	12,000 sq.ft.

2. Ground Level Uses in the Leather District. Within a Proposed Project, uses with street frontage on Atlantic Avenue or Beach, East, Essex, Kneeland, Lincoln, South, Surface Artery, or Tufts Street, either located on the ground level or entered by stairs from a sidewalk entry, are limited to the permissible Ground Level Uses, as listed in Appendix A to this Article. A display window physically contiguous to a Ground Level Use, or with exhibits or displays operated and maintained by an occupant of the building in which said window is located, is allowed as a Ground Level Use. All other uses with street frontage which are otherwise allowed by this Section 44-10 are conditional uses when located on the ground level or entered by stairs from a sidewalk entry.
3. Allowed Uses. No land or structure in the Leather District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except in accordance with the provisions of this Subsection 44-10.4 or Subsection 44-10.5. Any use specified in this Subsection 44-10.4 is allowed as a matter of right, subject only to the provisions of this Section 44-10 including, without limitation, Subsections 1 and 2 thereof.
 - (a) Residential Uses. Limited to multifamily dwelling, lodging or boarding house, temporary housing shelter, or group residence, limited, as defined in clause (22B) of Section 2-1. Residential uses include any Affordable dwelling units, including but not limited to Affordable dwelling units which are rental units, condominiums, or limited equity share cooperatives.
 - (b) Restaurant Uses. Limited to the service or sale of food or drink for on-premises consumption, with or without entertainment, provided that uses described in Use Item No. 38A of Section 8-7 are forbidden.

- (c) Cultural and Entertainment Uses. Library or museum open to the general public, art gallery (nonprofit or for profit), legitimate theater (commercial or nonprofit) including motion picture or video theater, but not drive-in theater; auditorium, concert hall, performance space, artist's studio, music or performance practice spaces; provided that uses described in Use Item No. 38A of Section 8-7 are forbidden.
- (d) Office Uses. Limited to business or professional offices; real estate, insurance, or other agency office; office building; post office; or bank (other than drive-in bank) or similar establishment.
- (e) Hotel or Motel Uses. Limited to hotel and motel uses and uses ordinarily incidental thereto, including, without limitation, conference facilities.
- (f) Community Uses. Day care center, family care center, nursery school, kindergarten, elementary or secondary school, community health center or clinic; community center, settlement house, adult education center, or other community service facility.
- (g) Recreational Uses. Limited to private grounds for games and sports; other social, recreational, or sports center conducted for profit; private club operated for members only (including quarters of fraternal or sororal organization).
- (h) Public Service Uses. Limited to public service pumping station, sub-station, automatic telephone exchange, fire station or police station, subject to St. 1956, c. 665, s. 2.
- (i) Wholesale Uses. Limited to office or display or sales space of a wholesale, jobbing, or distributing houses; provided that not more than twenty-five percent (25%) of the gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (j) Service Uses. Limited to video or film production studio; barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop; framer's studio; caterer's establishment; photographer's studio; printing plant; taxidermist's shop; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; funeral home; undertaker's establishment; mortuary; research laboratory; radio or television studio; animal hospital or clinic; kennel; or similar use; provided that in laundries and cleaning establishments, only nonflammable solvents are used for cleaning.

- (k) General Retail Uses. Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage; provided that uses described in Use Item No. 34A of Section 8-7 are forbidden.
- (l) Local Retail Uses. Store primarily serving the local retail business or service needs of the neighborhood including, but not limited to store retailing one of the following: food, baked goods, groceries, packaged alcoholic beverages, drugs, tobacco products, clothing, dry goods, books, flowers, paint and other artist's supplies, hardware and other minor household appliances, books, and photographic equipment; provided that uses described in Use Item No. 34A of Section 8-7 are forbidden.
- (m) Institutional Uses. Limited to place of worship, monastery, convent, or parish house; elderly care facility; clinic or professional offices accessory to a hospital or sanatorium; nursing or rest home, orphanage, or similar institution not for correctional purposes.
- (n) Accessory Uses, subject to the limitations and restrictions of Article 10, limited to: a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use under Subsection 4(a) of this Section 44-10 or a hotel or motel; a swimming pool or tennis court; the storage of flammable liquids and gases incidental to a lawful use; the manufacture, assembly, or packaging of products sold on the lot.
- (o) Light Manufacturing Uses. Subject to the proviso that all machinery and equipment shall be so installed and maintained, and all activity in connection with each use shall be so conducted, in such manner that noise, smoke, dust, odor, and all other similar objectionable factors shall not cause a nuisance or injury to other persons in the vicinity of the site, limited to
 - (1) the design, development, packaging, assembly, repairing, servicing, renting, testing, fabrication or handling of products including the following:
 - (i) ceramic products, including pottery and glazed tile;
 - (ii) electronic and communication products, including, but not limited to, computer equipment, sound equipment, and household appliances;

- (iii) instruments for engineering, medical, dental, scientific, photographic, optical, or other similar professional use;
 - (iv) furniture or musical instruments;
 - (v) photographic supplies;
 - (vi) supplies related to printing or engraving;
 - (vii) garment assembly and alteration;
 - (viii) distribution of paper products, or plumbing and interior decorating supplies and equipment;
 - (ix) leather cutting and/or assembly, but not leather tanning or coloring.
- (2) Scientific research and development uses: laboratories and facilities for theoretical, basic, and applied research, product development and testing, prototype fabrication, or production of experimental products prior to preclinical testing;
 - (3) Printing, engraving, and related production processes;
 - (4) Publishing or distribution of books, newspapers, or other printed material;
 - (5) Wholesale and distribution uses: facilities for display, transfer, consolidation, handling, inventory, or protection of manufactured products, components, preassembled parts, or other goods;
 - (6) Warehousing and storage as an adjunct to operating business uses, except as specifically forbidden in Section 36-7.6;
 - (7) Art use; and
 - (8) Artists' mixed-use space.
4. Conditional Uses. No land or structure in the Leather District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Subsection 44-10.5. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the regulations set forth in this Section 44-10.

- (a) Residential Uses. Group care residence, general.
 - (b) Parking. Parking lot or parking garage except as accessory uses allowed under Subsection 4(n) of this Section 44-10.
 - (c) Fast Food Restaurant Uses. Limited to sale over the counter, not wholly incidental to a use listed under paragraph 4(b), 4(k), or 4(l) of this Section 44-10, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
 - (d) Vehicle Rental Uses. Rental motor vehicle and trailer agency accessory to a hotel or motel, provided that no rental vehicles or trailers are parked on the street and that exterior lighting is arranged to shine downward and away from residences.
 - (e) Transportation Uses. Limited to bus terminal, bus station, subway station, railroad passenger station, or airline shuttle service.
 - (f) Institutional Uses. Limited to college or university granting degrees by authority of the Commonwealth; trade, professional, or other school; machine shop or other noisy activity accessory to a school, college, or university adequately sound-insulated to protect the neighborhood from unnecessary noise; library or museum not open to the general public; hospital, sanatorium or clinic; professional office accessory to a hospital or sanatorium and located on the same lot; clinic not accessory to a main use.
 - (g) Service Uses. Check cashing business.
 - (h) Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.
 - (i) The change of use of any allowed residential use to any other use.
5. Forbidden Uses. No land or structure in the Leather District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use described in Use Item No. 34A or No. 38A or for any use not specified in Subsections 3, 4, or 5 of this Section 44-10 as an allowed or conditional use, except for such nonconforming uses as may be allowed to be continued under the provisions of Article 9.

(↑As amended on February 22, 1991, September 30, 1993, October 6, 1994, and September 20 and November 21, 1996.)

SECTION 44-11. Off-Street Parking. Within the Leather District, off-street parking facilities are not required in any Proposed Project, except for Proposed Projects involving the construction of new buildings for residential, hotel, or motel use. For such Proposed Projects, parking shall be provided for residential uses at the rate of one (1) space per dwelling unit and for hotel or motel uses at the rate specified in Section 23-1. The off-street parking requirements stated as applicable to a specific floor area ratio set forth in Table B of Section 13-1 shall also apply to the same floor area ratio set forth in this Article. Further, the provisions of Sections 23-8, 23-9, and 23-10 shall govern any Proposed Project in the Leather District for which off-street parking is required.

↑**SECTION 44-12. Off-Street Loading.** Within the Leather District, Article 24 provides the regulations governing the provision and design of off-street loading facilities for the use of any structure or land not subject to Large Project Review. Where a use specified in this Article is not included in any use item number listed in Article 24, off-street loading facilities shall be provided in accordance with the requirements for the Use Item number listed in Article 24 which is most similar to such use. The provision and design of off-street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review, and mitigative measures, as appropriate, shall be required through such review to minimize the deleterious effects of any off-street loading facilities on adjacent properties.

(↑As amended on May 9, 1996.)

SECTION 44-13. Regulations. The Boston Redevelopment Authority may promulgate and amend from time to time regulations to administer this Article.

SECTION 44-14. Severability. The provisions and requirements of this Article are severable, and if any such requirement or provision shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision or requirement of this Article.

SECTION 44-15. Definitions. Words and phrases defined in Appendix B to this Article, when capitalized in this Article, shall have the meanings set forth in said Appendix B.

SECTION 44-16. Appendices. The following appendices are incorporated in this article:

1. Appendix A - Ground Level Uses
2. Appendix B - Definitions

APPENDIX A to ARTICLE 44

Ground Level Uses

1. The following uses are Ground Level Uses and are allowed uses within the Leather District, provided that the uses described in Use Items No. 34A and No. 38A are forbidden. This list is intended to be illustrative of Ground Level Uses and not exclusive.

Antique stores
Appliances, repair shops
Appliances, sales
Art galleries, commercial and nonprofit
Art metal craft shops
Art needle work shops
Artists' supply and music stores
Athletic goods stores
Auditoriums
Bakeries or pastry shops
Bank branch offices
Bank machines, provided that the ground level street frontage of a bank facility containing only bank machines is limited to twenty (20) feet.
Barber shops
Beauty parlors
Bicycle stores, rental or repair
Book stores or card stores
Cafes
Candy stores
Carpet, rugs, linoleum, or other floor covering stores
Churches
Cigar stores
Clock or watch stores or repair shops
Clothing retail establishments
Clothing stores (men's, women's, children's apparel)
Clubs, noncommercial
Coffee shops
Coin stores
Community centers
Costume rental establishments
Dance halls, public
Day care centers
Delicatessen stores
Department stores
Diners
Dressmaking shops, custom

APPENDIX A to ARTICLE 44 (continued)

Drug stores
Dry cleaning establishments or laundromats
Dry goods or fabric stores
Eating or drinking places, provided that Fast Food Restaurant Uses, as described in Subsection 44-10.5(c), are conditional as provided in Section 44-10.5, and subject to the provisions of Section 44-10.6.
Electronic, video or audio sales or repair
Entrance/exit to off-street parking or loading area provided that it occupies not more than thirty (30) feet of ground level street frontage.
Entrance/exit to public transit facilities
Fabric or yarn stores
Fire Stations
Fishing tackle or equipment stores, or rental establishments
Florist shops
Food stores, including supermarkets, produce and grocery stores, markets, health foods, delicatessens, prepared food/special food, spices and herbs, coffees, teas, meat, fish, poultry, and cheese stores
Furniture stores
Furrier shops, custom
Gift shops
Hair products for headwear
Hardware stores
Health club or gym (only a Lobby Entrance Area not occupying more than twenty (20) feet of ground level street frontage)
Historical exhibits, open to the public generally
Hobby shops
Hotel or motel (only a Lobby Entrance Area not occupying more than twenty (20) feet of ground level street frontage)
Housewares
Household appliance repair shops
Ice cream stores
Interior decorating establishments
Jewelry shops
Kitchenware
Lamp shops
Leather goods or luggage stores
Libraries, open to the public generally
Locksmith shops
Luggage stores
Millinery shops
Motion picture or video production studios
Museums, open to the public generally
Music stores

APPENDIX A to ARTICLE 44 (continued)

Musical instruments, repair
Newsstands, enclosed
Office or business machine stores, sales or rental
Offices (only a Lobby Entrance Area of an office or office building, not occupying more than twenty (20) feet of ground level street frontage)
Optician or optometrist establishments
Orthopedic stores
Paint stores
Parish houses
Parks, public or private
Party shops
Perfume shops
Pet shops
Photographic developing
Photographic equipment stores
Photographic studios
Photographic supply stores
Photostating establishments
Picture framing stores
Police stations
Post offices
Printing establishments
Radio appliance shops, repair or sales
Record stores
Recreational centers (noncommercial)
Residences (only a Lobby Entrance Area of a residential building, not occupying more than twenty (20) feet of ground level street frontage)
Sewing machine stores, selling household machines
Shoe repair and shoeshine shops
Shoe stores
Sign painting shops
Skating rinks, outdoor ice
Sporting goods stores
Sports shops
Stamp stores
Stationery stores
Studios: music, dancing, visual arts, or theatrical
Tailor shops, custom
Telegraph, FAX, or Express Mail offices
Television repair shops
Theater
Ticket sales

APPENDIX A to ARTICLE 44 (continued)

Tobacco stores
Tour operator
Toy stores
Typewriter stores
Typewriter or other small business machine repair stores
Variety or convenience stores
Video or motion picture store sales or rentals
Wallpaper stores

APPENDIX B to ARTICLE 44

Definitions

For the purposes of this article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 44-4, or the authorized agent of any such person or entity.
2. "Corner Parcel" means a parcel located at the intersection of two public streets.
3. "Curb Line" means the line of the curb or other structure or indication separating the portion of the street devoted to vehicular traffic from the sidewalk.
4. "Ground Floor Ceiling Height" means the height of the underside of the floor structure of the second floor.
5. "Display Window Area" means that portion of the Street Wall between (i) a height of two (2) feet above the ground floor and (ii) the height of the underside of the floor structure of the second floor, or fourteen (14) feet, whichever is less.
6. "Ground Level Uses" means the uses listed in Appendix A to this article.
7. "Historic Building" means any building listed in the Boston Landmarks Commission Survey of Boston as a Category One, Category Two, Category Three, or Category Four building.
8. "Lobby Entrance Area" means the frontage at street level of the lobby of an office, residential, hotel, motel, or other structure.
9. "Leather District Plan" means the zoning regulations applicable to the Leather District and the plan for the District as evidenced by applicable development precedents and planning studies and any applicable comprehensive plan for the District, adopted by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of the code.
10. "Leather District" means the area, so entitled, depicted on Map 1C of this Code.
11. "Modal Street Wall Height" means the Street Wall Height calculated as follows:

APPENDIX B to ARTICLE 44 (continued)

- (1) For each developed lot on the same side of the same street, the height above grade of the Street Wall is measured. The measurement is rounded off to the nearest half foot if the said buildings are attached and to the nearest foot if the said buildings are detached. The width of each lot is then measured. These measurements may be scaled off from a reliable plan or map.
 - (2) The widths of all lots with the same Street Wall Height are added up.
 - (3) The Street Wall Height with the largest total lot width is the Modal Street Wall Height for the block. If two or more Street Wall Heights, as thus computed, have equal lot widths, the one closest to the Proposed Project shall be the Modal Street Wall Height.
12. "Proposed Project" means the demolition, erection, reconstruction, structural alteration, or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit. A Proposed Project may proceed in phases and may include more than one building, structure, or use.
13. "State Building Code" means the state building code and amendments and rules and regulations thereto as promulgated by the state board of building regulations under sections ninety-three, ninety-four, and ninety-five of Chapter One Hundred Forty-Three of the General Laws.
14. "Street Wall" means the portion of the exterior wall (including recesses, bays, windows, doors, and other features) of a Proposed Project that fronts on a public street (excluding public alleys) and is below the Street Wall Height, determined pursuant to Section 44-7.
15. "Street Wall Plane" means the planar surface of the Street Wall (disregarding recesses, bays, windows, doors, etc.) required pursuant to Section 44-7.
16. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

↑ARTICLE 45

GOVERNMENT CENTER/MARKETS DISTRICT

(↑Article inserted on April 1, 1991*)

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* Date of public notice: February 25, 1991 (see St. 1956, c. 665, s. 5).

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 45-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the Government Center/Markets District as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this Code. The goals and objectives of this Article and the Government Center/Markets Plan are: (1) to preserve Boston's historic resources and public spaces, which are a vital component of Boston's heritage; (2) to create new links between the built environment and the waterfront; (3) to provide for appropriately scaled development in the remaining sites where development would be appropriate; (4) to provide for infrastructure and capital improvements where necessary; and (5) to encourage pedestrian activity in the downtown.

SECTION 45-2. Recognition of the Government Center/Markets Plan. In accordance with Section 27D-18 of this Code, which requires production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the Government Center District (Special Study Area No. 4), the Zoning Commission hereby recognizes the Government Center/Markets District Plan as the general plan for the Government Center/Markets District and as the portion of the general plan for the City of Boston applicable to the Government Center/Markets District. This Article is one of the means of implementing the Government Center/Markets Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 45-3. Physical Boundaries. The provisions of this Article are applicable only in the Government Center/Markets District. The boundaries of the Government Center/Markets District are as shown on a map entitled, "Map 1H Government Center/Markets District (supplemental to 'Map 1 Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 45-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Government Center/Markets District and applies as specified in Section 4-1 regarding the conformity of buildings and land to this Code. Application of the provisions of Article 27D to the Government Center/Markets District is rescinded on the effective date of this Article, except as provided below. Where conflicts exist between this Article and the remainder of this Code, the provisions of this Article shall govern. For the Government Center/Markets District, except where specifically indicated in this Article, the provisions of this Article supersede Article 13 (except Section 13-3), and Articles 8 and 14 through 23, inclusive, of this Code. The following Proposed Projects are exempt from the provisions of this Article, and are governed by the rest of this Code, including Article 27D.

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

SECTION 45-5. Establishment of Protection Areas. This Section establishes nine Protection Areas within the Government Center/Markets District. The nine Protection Areas are established in order to protect the existing scale, the quality of the pedestrian environment, and concentrations of historic buildings within and abutting the Protection Areas. The nine Protection Areas are designated in Map 1H of this Code and are identified below. Any other provision of this Article or Code notwithstanding, Proposed Projects within a Protection Area are limited to the building height and FAR specified for such Protection Area, as follows:

1. Blackstone Block Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "Blackstone Block Protection Area," maximum building heights are as indicated on Map 1H, and a maximum FAR of three (3) is allowed. The purpose of these varying heights is to protect certain historic sites and structures, identified by the addresses shown below. The following site addresses are given for ease of reference only and Map 1H should be consulted to determine lot boundaries and applicable maximum building heights.

<u>Site</u>	<u>Maximum Building Height</u>
72-86 Blackstone Street	46'
88-98 Blackstone Street	67'
100-102 Blackstone Street	56'
106 Blackstone Street	56'
108-112 Blackstone Street	44'
114-120 Blackstone Street	56'
Hancock Row, Creek Square	46'
139-149 Hanover Street	54'
10 Marshall Street	32'
11-12 Marshall Street	67'
14-22 Marshall Street	48'

<u>Site</u>	<u>Maximum Building Height</u>
1-13 Union Street	48'
15 Union Street	48'
17-21 Union Street	45'
25-27 Union Street	55'
31-35 Union Street	62'
37 Union Street	38'
41-43 Union Street	38'
45-55 Union Street	45'
16-18 North Street	70'
20-22 North Street	72'
24-60 North Street	72'

2. Broad Street Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "Broad Street Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
3. Markets Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "Markets Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
4. Old State House Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "Old State House Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
5. Pemberton Square Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "Pemberton Square Protection Area," a maximum building height of one hundred and twenty-five (125) feet and a maximum FAR of eight (8) are allowed.
6. Saltonstall Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "Saltonstall Protection Area," a maximum building height of fifty-five (55) feet and a maximum FAR of three (3) are allowed.
7. Sears Crescent Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "Sears Crescent Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.

8. State House Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "State House Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.
9. State Street Protection Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "State Street Protection Area," a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of eight (8) are allowed.

↑SECTION 45-6. **Establishment of Restricted Growth Areas.** This Section establishes the following Restricted Growth Areas in order to protect existing moderately scaled development. The two Restricted Growth Areas are designated on Map 1H of this Code and identified below. Proposed Projects within a Restricted Growth Area are limited to the building height and FAR specified for such Restricted Growth Area, as follows:

1. Sudbury Street Restricted Growth Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "Sudbury Street Restricted Growth Area," a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
2. India Street Restricted Growth Area. Within that portion of the Government Center/Markets District depicted on Map 1H of this Code as the "India Street Restricted Growth Area," a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(↑As amended on May 9, 1996.)

↑SECTION 45-7. **Establishment of Medium Density Areas.** This Section establishes the following Medium Density Areas within the Government Center/Markets District. The three areas are designated on Map 1H of the Code and identified below. Proposed Projects within these areas are limited to the building height and FAR specified for such areas as follows:

1. Custom House Medium Density Area. Within that portion of the Government Center/Markets District depicted on Map 1H of the Code as

the "Custom House Medium Density Area," a maximum building height of one hundred and twenty-five (125) feet and a maximum FAR of eight (8) are allowed; provided that any Proposed Project shall be allowed a maximum building height and FAR in Substantial Accord with a building height of one hundred and fifty-five feet and an FAR of ten (10), if such Proposed Project is subject to or shall elect to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6. For purposes of calculating FAR for Proposed Projects for the Custom House Medium Density Area only, the term "Lot" is as defined in Appendix B hereto.

2. Congress/State Street Medium Density Area. Within that portion of the Government Center/Markets District depicted on Map 1H of the Code as the "Congress/State Street Medium Density Area," a maximum building height of one hundred and twenty-five (125) feet and a maximum FAR of eight (8) are allowed, provided that any Proposed Project shall be allowed a maximum building height of one hundred and fifty-five (155) and a maximum FAR of ten (10) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
3. City Hall Medium Density Area. Within that portion of the Government Center/Markets District depicted on Map 1H of the Code as the "City Hall Medium Density Area," a maximum building height of one hundred and twenty-five (125) feet and a maximum FAR of eight (8) are allowed, provided that any Proposed Project shall be allowed a maximum building height of one hundred and fifty-five (155) and a maximum FAR of ten (10) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.
4. New Chardon Street Medium Density Area. Within that portion of the Government Center/Markets District depicted on Map 1H of the Code as the "New Chardon Street Medium Density Area," a maximum building height of one hundred and twenty-five (125) feet and a maximum FAR of eight (8) are allowed; provided that any Proposed Project shall be allowed a maximum building height of one hundred and fifty-five (155) and a maximum FAR of ten (10) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(↑ As amended on May 9, 1996.)

↑ SECTION 45-8. **Government Center/Central Artery Area.** Notwithstanding any contrary provision of this Article, the Government Center/Central Artery Area shall

be governed by the applicable use, dimensional, and other requirements of Article 49, Central Artery Special District. In particular, the provisions of Sections 45-14, 45-16, 45-18, and 44-19 shall not be applicable to the Government Center/Central Artery Area. The Central Artery Special District Plan, as that term is defined in Article 49, shall be part of the general plan for the Government Center/Markets District as it applies to the Government Center/Central Artery Area.

(↑As amended on June 7, 1991.)

↑SECTION 45-9. Establishment of Zone Within Which a Planned Development Area May Be Permitted. This Section establishes one zone within which a Planned Development Area ("PDA") may be permitted within the Government Center/ Markets District. The purposes for establishment of this zone as one within which a PDA may be permitted are: to establish a more flexible zoning law and encourage large-scale redevelopment of the block bounded by New Chardon Street, Cambridge Street, Staniford Street, and Merrimac Street, while insuring high-quality design by providing planning and design controls; and to encourage development which knits together the surrounding neighborhoods through a new urban design for the area.

1. Consistency with Section 3-1A; Review and Approval Requirements. The area in the Government Center/Markets District within which a PDA may be permitted is shown on Map 1H of this Code, and is otherwise referred to herein as the "PDA Permitted Zone." No PDA is permitted within the Government Center/Markets District except within the PDA Permitted Zone. Any application for Development Plan approval for a Proposed Project within the PDA Permitted Zone is subject to the provisions of this Section and Sections 45-10 through 45-12, in addition to the provisions of Subsection 3-1A.a. See Article 80 concerning the applicability of Planned Development Area Review.
2. Reconstruction of Pre-existing Structures. A Proposed Project for the reconstruction of a structure in existence in a PDA as of the date of Development Plan approval and described in said Development Plan, or of a structure constructed pursuant to said Development Plan, shall be determined by the Boston Redevelopment Authority to be consistent with said Development Plan, provided that said reconstruction is substantially similar to the original structure. Said reconstruction, unless described as part of the original Proposed Project in said Development Plan, shall constitute a separate Proposed Project for all purposes hereunder.

(↑As amended on May 9, 1996.)

SECTION 45-10. Planned Development Area: Use and Dimensional Regulations. The land use and dimensional regulations for a PDA are established by this Section.

1. Use Regulations. Proposed Projects within a PDA are subject to the use regulations set forth in Section 45-14, except to the extent the same are expressly modified by an approved Development Plan.
2. Dimensional Regulations. Proposed Projects within a PDA shall be permitted a maximum FAR of eight (8) and a maximum building height of four hundred (400) feet. For the purposes of this Subsection 45-10.2, FAR shall be computed as though the land within a PDA were in single ownership, notwithstanding actual ownership patterns or changes in ownership occurring after the approval of a Development Plan for the PDA.
3. Maximum Floor Plates. Notwithstanding any provision in this Section to the contrary, above a height of ninety (90) feet, no single floor of separate elements of a Proposed Project within a PDA shall exceed a maximum floor area of twenty-two thousand five hundred (22,500) square feet.
4. Street Wall Height. The Street Wall Height for Proposed Projects within a PDA shall not exceed ninety (90) feet. The endwall of a street which is a cul-de-sac does not count as a street wall for purposes of this Section 45-10.
5. Setback Requirement. Other than decorative cornices and other surface ornamentation, any portion of a Proposed Project (including, but not limited to, mechanical equipment) within a PDA which portion faces Merrimac Street, shall be set back by not less than one hundred and thirty-five (135) feet applicable at the Street Wall Height.

↑SECTION 45-11. **Planned Development Area: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(↑As amended on May 9, 1996 and July 31, 1997.)

↑SECTION 45-12. **Planned Development Area: Public Benefit Criteria.** The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this Article if the Development Plan proposes a plan for public benefits including one or more of the following: (a) the creation or retention of job opportunities and neighborhood economic development opportunities, in accordance with the provisions

of paragraph 1, below, of this Section; (b) the diversification and expansion of Boston's economy in new areas of economic activity, such as private investment in research and development of pharmaceutical and biomedical products in accordance with the provisions of paragraph 2, below, of this Section, or (c) the provision of substantial street improvements in accordance with the provisions of paragraph 3, below, of this Section.

1. Development Plan Approval for the Creation of New Job Opportunities. The Boston Redevelopment Authority may approve a Development Plan proposing creation of new job opportunities if it determines that: (a) employment positions in businesses occupying the Proposed Project are newly created in the Government Center/Markets District; (b) the Development Plan provides for entrepreneurial assistance measures, such as (i) information, outreach, and education programs concerning new business development; (ii) general business planning and management counseling; (iii) technical assistance; and (iv) the provision of financing options; or (c) the Development Plan provides for job opportunities to facilitate community access to jobs created by the Proposed Project.
2. Development Plan Approval for Diversification and Expansion of Boston's Economy. The Boston Redevelopment Authority may approve a Development Plan proposing diversification and expansion of Boston's economy if at least twenty percent (20%) of the gross floor area of the Proposed Project is dedicated to or supportive of uses such as, but not limited to, the following: (a) research, development, and production of pharmaceutical and biomedical products; (b) the design, development, fabricating, and testing of instruments for engineering, medical, dental, scientific, optical, or other similar professional use; or (c) other scientific research and development uses, including laboratories and facilities for theoretical, basic, and applied research, product development and testing, prototype fabrication, or production of experimental products. Examples of uses which shall be considered "supportive of" the uses enumerated in subparagraphs (a), (b), and (c) above include, but are not limited to: office space occupied by private entities engaged in such uses, or occupied by governmental entities regulating such uses; hotel, conference, or convention facilities; and educational facilities providing instruction in fields related to such uses.
3. Development Plan Approval for the Provision of Street Improvements. The Boston Redevelopment Authority may approve a Development Plan providing, either directly or through funding, for substantial street improvements to streets adjacent to and in the vicinity of the PDA. Such street improvements must be consistent with any applicable street improvement regulations or guidelines and must be sufficient, as determined by the Boston Redevelopment Authority, to improve the

appearance, condition, quality of design and materials, and accessibility and useability of the affected streets by pedestrians, taking into account increased vehicular and pedestrian flows.

(↑As amended on May 9, 1996.)

↓SECTION 45-13. **Planned Development Area: General Design and Environmental Standards.** In addition to the Large Project Review requirements set forth in Article 80 of this Code, Proposed Projects submitted as part of an application for Development Plan approval under Planned Development Area Review shall comply with the District general design and environmental impact standards described herein. Compliance with these additional standards shall be determined through Large Project Review. The purpose of these additional standards is to maintain and improve the quality of life in the Government Center/Markets District.

1. Shadow Criteria. Each Proposed Project shall be arranged and designed in a way to minimize, to the extent reasonably practicable, shadows on any portion of dedicated public parkland and publicly accessible open space. Shadow studies shall be conducted in connection with any Proposed Project demonstrating compliance with the foregoing standard.
2. Wind. Buildings shall be designed to avoid excessive and uncomfortable downdrafts on pedestrians. Each Proposed Project shall be shaped, or other wind-baffling measures shall be adopted, so that the Proposed Project will not cause ground-level ambient wind speeds to exceed the standards in Table A of this Section.

TABLE A

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity*</u>	<u>Permitted Annual Occurrence Frequency</u>
Limit for All Pedestrian Areas	13.8 m/sec (31 mph)	1%
Major Walkways - Especially Principal Egress Path for High-Rise Buildings	13.8 m/sec	1%
Other Pedestrian Walkways - Including Street and Arcade Shopping Areas	11.2 m/sec (25 mph)	5%
Open Plazas and Park Areas, Walking and Strolling Areas	6.3 m/sec (14.1 mph)	15%
Open Plaza and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

* The effective gust velocity (egv) is defined as $egv = U + 1.5 fvc$, where U is the mean windspeed at a particular location and fvc is the root mean square of the fluctuating velocity component measured at the same location over the same time interval.

3. Transportation Access. Each Proposed Project that is subject to Large Project Review shall be subject to a Transportation Access Plan providing for effective transportation access and mitigation measures designed to minimize adverse traffic impacts on the Government Center/Markets District and surrounding neighborhoods and improve traffic flow and access within the affected area. Such Transportation Access Plan shall also provide for effective parking management measures to minimize adverse parking effects within the Government Center/Markets District and surrounding neighborhoods.
4. Enhancement of Pedestrian Environment. Each Proposed Project shall enhance the pedestrian environment, by means such as: (a) pedestrian pathways connecting to mass transit stations; (b) spaces accommodating

pedestrian activities and public art; (c) materials, landscaping, public art, lighting, and furniture that enhance the pedestrian environment; (d) interior retail uses; (e) pedestrian systems that encourage more trips on foot; (f) sidewalk and street improvements that improve pedestrian flow and increase pedestrian safety on sidewalks and crosswalks; (g) other attributes that improve the pedestrian environment and pedestrian access to mass transit stations; (h) appropriate management and maintenance of public space within the Proposed Project; and (i) exterior or interior pedestrian passageways.

5. Boston Civic Design Commission Review. In addition to complying with the above standards, each Proposed Project shall be subject to review by the Boston Civic Design Commission, in accordance with the provisions of Article 28.

(↑As amended on May 9, 1996.)

↑SECTION 45-14. **Government Center/Markets District Use Regulations.** In the Government Center/Markets District the use of land and structures is hereby regulated as provided in this Section. The provisions of Article 8, except Section 8-6, apply only as specified in this Section. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 45-14, subject to any modification to such use provisions as may expressly be set forth in the approved Development Plan for a Proposed Project located within a PDA.

1. Ground Level Uses in the Government Center/Markets District. Within any Proposed Project in the Government Center/Markets District, uses with street frontage on streets listed in Table B, and located on the ground level or entered by a ramp or stairs from a sidewalk entry, except for lobby entrances, are limited to Ground Level Uses, as listed in Appendix A of this article. All other uses with such street frontage which are otherwise allowed by this Section are conditional uses when located on the ground level or entered by a ramp or stairs from a sidewalk entry.

TABLE B

Streets with Required Ground Level Uses

Atlantic Avenue	New Chardon Street
Blackstone Street	North Street
Broad Street	Park Street
Cambridge Street	State Street
Court Street	Tremont Street
Cross Street	Union Street

2. Inclusion of Day Care Facilities. The provisions of this Section 45-14.2 apply only to Proposed Projects which exceed a height of one hundred twenty-five (125) feet, or an FAR of eight (8), or both. Any Proposed Project having a gross floor area (not including the floor area devoted to Residential Uses, Cultural Uses, or Community Uses as those uses are described in Subsections 3 and 4 of this Section) which equals or exceeds one hundred thousand (100,000) square feet shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table C of this Section. For the purposes of this Section 45-14.2 and Table C only, floor area devoted exclusively to hotel and restaurant uses and uses accessory thereto shall be multiplied by 0.2 before being used in the calculation of required day care facilities. An Applicant for a Proposed Project subject to the provisions of this Section 45-14.2 may fulfill its obligations under this paragraph by (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project, within the District. Any Proposed Project subject to the provisions of this Section shall devote to on-site day care facilities an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this Section 45-14.2 shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE C

Provision of Day Care Facilities

<u>Size of Proposed Project*</u> <u>(Gross Square Feet)</u>	<u>Minimum Day Care Facilities</u> <u>(Gross Square Feet)</u>
100,000 up to 200,000	2% of gross floor area
200,000 up to 500,000	4,000
500,000 up to 1,000,000	8,000
more than 1,000,000	12,000

Exclusive of floor area devoted to Residential, Cultural, or Community Uses.

3. Allowed Uses. No land or structure in the Government Center/Markets District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use not specified (a) in this Subsection 3, (b) in an

approved Development Plan (except uses therein identified as conditional uses) for land or structures in a PDA, or (c) in of Section 45-14.4 subject to the provisions of Article 6. Any use so specified in this Subsection 3 shall be allowed as of right, subject only to the regulations set forth in this Section 45-14 including without limitation, Subsections 1 and 2, or in the case of a PDA, the approved Development Plan.

- (a) Residential Uses. Limited to multifamily dwelling; artists' live/work space; apartment house; group residence, limited; lodging or boarding house, and any dwelling converted for more families, where structures after conversion will conform to this Code. Residential uses may include any affordable dwelling units, including but not limited to affordable dwelling units which are rental units, condominiums, or limited equity share cooperatives.
- (b) Restaurant Uses. Limited to lunchroom, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, but excluding Take-Out Restaurant Uses, except as provided in paragraph 45-14.3(u).
- (c) Cultural Uses. Limited to concert hall; art gallery; museum; cultural or historical exhibition; theater, not including motion picture or video theatre; performance space; music rehearsal studio; artist studio or work space.
- (d) Motion picture or video theatre, but not drive-in theater, subject to the provisions of Section 45-14.5.
- (e) Office Uses. Limited to offices of community service organizations; medical or dental office; business or professional offices; real estate, insurance, or other agency or government office; office building; post office; bank (including automatic teller machines but not including drive-in bank) or similar establishment.
- (f) Hotel Uses.
- (g) Educational Uses. Nursery school, kindergarten, elementary or secondary school.
- (h) Recreational Uses. Limited to private grounds for games and sports or other social, recreational, or sports center conducted for profit; private club (including health or athletic club and quarters of fraternal or sororal organizations) operated for members only.

- (i) Community Uses. Limited to adult education center; community center building, settlement house; day care center, family care center, community health center.
- (j) Public Service Uses. Limited to police station, fire station, public service pumping station, substation, or automatic telephone exchange, subject to St. 1956, c. 665, s. 2.
- (k) Wholesale Uses. Limited to office or display or sales space of a wholesale, jobbing, or distributing house, provided that not more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (l) Service and Trade Uses. Limited to video or film production studio; barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop, provided that in laundries and cleaning establishments only nonflammable solvents are used for cleaning; framer's studio; caterer's establishment; photographer's studio; printing plant; taxidermist's shop; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; key and lock shop; express mail operation; ticket outlet; funeral home; undertaker's establishment; mortuary; or other similar service or trade use; animal hospital or clinic.
- (m) General Retail Uses. Limited to department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage.
- (n) Local Retail Uses. Limited to store primarily serving the local retail business or service needs of the neighborhood including, but not limited to, store retailing one of the following: food, baked goods, groceries, packaged alcoholic beverages, drugs, tobacco products, clothing, dry goods, books, flowers, paint and other artists' supplies, hardware and other minor household appliances, furniture, and photographic equipment.
- (o) Vehicle Rental Uses. Limited to rental motor vehicle service, van or shuttle service, and trailer rental service accessory to a hotel or motel, provided that no rental vehicles or trailers are parked on the street.
- (p) Uses specified in Appendix A hereto.

- (q) Institutional Uses. Limited to place of worship, monastery, convent, or parish house; library not accessory to a conditional institutional use; elder care facility, orphanage, or similar institution not for correctional purposes, not providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons.
 - (r) Research Laboratory, not accessory to a conditional institutional use.
 - (s) Communications Uses. Limited to radio and television studio, operation of fiber optic and other related communication equipment; telecommunication operations; data retrieval and transmission operations.
 - (t) Urban Plazas. Limited to passive and recreational uses accessible from adjoining streets, with facilities and structures appropriate to urban plazas, including benches and other seating facilities, pools, fountains, works of art, planting and other features.
 - (u) Accessory Uses subject to the limitations and restrictions of Article 10, limited to: (i) a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential use under Section 45-14.3(a) or hotel use under Section 45-14.3(f); (ii) accessory swimming pool, health club, tennis court; (iii) sale over the counter, wholly incidental to a use listed under Section 45-14.3, of food or drink prepared on premises for off-premises consumption, provided that such use is accessory to a hotel or restaurant use if, as so sold, such food or drink is ready for take-out; (iv) the storage of flammable liquids and gases incidental to a lawful use; (v) the manufacture, assembly, or packaging of products sold on the lot; (vi) the maintenance and operation of not more than four amusement game machines in a private club, dormitory, fraternity, or sorority house, or similar noncommercial establishment, or in any commercial establishment; (vii) any use ancillary to, and ordinarily incident to, a lawful main use, provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory.
4. Conditional Uses. No land or structure in the Government Center/ Markets District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Section 45-14.4, or within a PDA, is identified as a conditional use in the applicable Development Plan. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the regulations set forth in this Section 45-14.4, or may be allowed by the

Zoning Commission in its approval of a Development Plan for a PDA. The continued right to a conditional use is dependent upon maintaining the character and extent of operations and structures.

- (a) Residential Uses. Limited to temporary dwelling structure; group care residence, general; and any dwelling converted for more families, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.
- (b) Light Manufacturing Uses (as identified in Subsection 36-4.1); kennel or pound.
- (c) Parking lot or parking garage, repair garage, gasoline service station, car wash.
- (d) Wholesale Uses. Limited to wholesale business, including accessory storage in roofed structures or office or display or sales space of a wholesale, jobbing, or distributing house where more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (e) Take-Out Restaurant Uses. Limited to sale over the counter, not wholly incidental to a restaurant or hotel use listed under Subsection 3 of this Section, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
- (f) The change of use of any residential use to another use.
- (g) Transportation Uses. Limited to bus terminal, bus station, subway station, or railroad passenger station, helicopter landing facility.
- (h) The maintenance and operation of more than four (4) amusement game machines in a private club, dormitory, fraternity or sorority home, or similar noncommercial establishment, or any commercial establishment.
- (i) Institutional Uses. College or university granting degrees by authority of the Commonwealth; fraternity or sorority house or dormitory; trade, professional, or other school; hospital, sanatorium, library accessory to another institutional use not allowed pursuant to paragraph 3(q) of this section; research laboratory accessory to a conditional institutional use; penal or correctional institution; detention home; machine shop or other noisy activity accessory to a school, college, or university, adequately sound-insulated to protect the neighborhood

from unnecessary noise; elder care facility, orphanage, or similar institution not for correctional purposes providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; clinic not accessory to a main use.

- (j) Service Uses. Check cashing business.
 - (k) Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.
 - (l) Accessory Uses. Subject to the limitation and restrictions of Article 10, limited to (i) a garage or parking space for occupants, employees, customers, students, and visitors, such use not accessory to a residential use, a hotel or a dormitory, fraternity, or sorority house; (ii) car wash, valet service, and automobile repair service accessory to a parking garage and contained entirely within said parking garage; (iii) the keeping of laboratory animals, other than households pets, provided that every enclosure is sufficient to prevent a nuisance to any adjacent residences or eleemosynary institutions, provided that all resulting noise, dust, fumes, gases, odors, and refuse are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to public health or safety; (iv) clinical or professional offices accessory to a hospital or sanatorium on the same lot.
5. Forbidden Uses. No land or structure in the Government Center/Markets District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use not specified in Sections 45-14.3 and 45-14.4 as an allowed or conditional use, except for such nonconforming uses as may be allowed to be continued under the provisions of Article 9. Without limitation, uses described in Use Items No. 34A and No. 38A of Table A of Section 8-7 shall be forbidden uses in the Government Center/Markets District.

(↑As amended on September 30, 1993, October 6, 1994, and September 20 and November 21, 1996.)

SECTION 45-15. Open Space Subdistricts. This section establishes open space subdistricts within the Government Center/Markets District as indicated in Table D, and as shown on Map 1H of this Code. Such subdistricts are subject to the provisions of this Section and Article 33 of the Code. Notwithstanding any other

provisions to the contrary, the open space subdistricts are not subject to the provisions of Article 45-14.

TABLE D

Open Space Subdistricts

<u>Location</u>	<u>Subdistrict Designation</u>
Cambridge Street Park	Urban Plaza (OS-UP)
Cardinal Cushing Park	Urban Plaza (OS-UP)
City Hall Plaza	Urban Plaza (OS-UP)
Dock Square Park	Urban Plaza (OS-UP)
Merrimac Street Plaza	Urban Plaza (OS-UP)
Old Granary Burial Ground	Cemetery (OS-CM)
Pemberton Square	Urban Plaza (OS-UP)
Somerset Street Plaza	Urban Plaza (OS-UP)
State House Park	Parkland (OS-P)
Union Street Park	Parkland (OS-P)

↑SECTION 45-16. **Specific Design Requirements.** Proposed Projects within the Government Center/Markets District shall comply with the specific design requirements established in this Section. The provisions of Article 6A shall be applicable to the requirements of this Section.

1. Area for Recyclable Materials. The provisions of this Subsection apply only to a Proposed Project for which off-street loading facilities are being constructed as part of said Proposed Project or which includes a Residential Use of twelve (12) or more dwelling units. Any such Proposed Project shall provide an area located within the vicinity of a loading bay, if any, or trash storage area for the separation, temporary storage, and collection of recyclable materials.
2. Street Wall Continuity. The provisions of this Subsection apply to all Proposed Projects except for a Proposed Project located adjacent to the City Hall Plaza OS-UP or Pemberton Square (OS-UP Subdistrict or within the Custom House Medium Density Area. The Street Wall of any Proposed Project subject to the provisions of this Subsection shall be built to be coextensive with the building line, as defined in Clause 7A of Section 2-1, of the block on which the Street Wall faces. If there is no determinable building line of said block, then said Street Wall shall be built at a depth from the curb line equal to that of the building line farthest from the curb line of the two blocks adjacent to said block, facing onto the same street. If there is no determinable building line of either of said adjacent

blocks, then (i) if the Proposed Project is subject to or elects to comply with Large Project Review, an appropriate Street Wall location shall be determined in Large Project Review, or (ii) otherwise, the Proposed Project shall be deemed subject to the Design Component of Small Project Review for the limited purpose of determining an appropriate Street Wall location. The foregoing notwithstanding, within a PDA a Street Wall of any Proposed Project shall be built at the depth from the curb line stipulated in the applicable Development Plan. A Proposed Project shall comply with the requirements of this Section 45-16.2 with respect to each facade facing a public street, but excluding alleys and private ways.

Except as otherwise provided in this Section 45-16.2, Street Walls shall be continuous across a lot. However, design articulation involving deviations for the Street Wall Plane of two (2) feet or less shall be permitted across the Street Wall. Larger recesses and bays in street walls shall be permitted as follows. For Proposed Projects neither subject to nor electing to comply with Large Project Review, the Street Wall may be recessed by ten (10) feet for up to fifty percent (50%) of the maximum aggregate surface area of the Street Wall below the ground floor ceiling height. Above the ground floor ceiling height the Street Wall may be recessed by ten (10) feet for up to fifty percent (50%) of the maximum aggregate surface area of the Street Wall, or up to fifteen (15) feet for up to thirty percent (30%) of the maximum aggregate surface area of the Street Wall. The areas within which recesses are permitted are not cumulative, so that the maximum aggregate surface area that may be affected by recesses, whether of ten (10) or fifteen (15) feet, is fifty percent (50%). Bay windows shall be permitted to extend from the Street Wall Plane above the ground floor ceiling height provided that such bay windows do not affect more than forty percent (40%) of the Street Wall Plane.

For Proposed Projects that are subject to or elect to comply with Large Project Review, recesses and bays shall be permitted if appropriate to the creation of visually interesting designs, provided that the facade remains compatible with its historical and architectural surroundings and visual continuity in the block front is preserved, as certified by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review.

3. Display Window Area Regulations. The provisions of this Subsection apply only to Proposed Projects of new construction of fifty thousand (50,000) or more square feet and not within the boundaries of any National Register District. The term "Display Window Area" means that area of any such Proposed Project that is between a height of two (2) feet above the ground floor and the height of the underside of the floor structure of the second floor of the Proposed Project, or fourteen (14) feet, whichever is less. The

Display Window Area excludes any area of Street Wall serving as ingress or egress to the interior of the Proposed Project, including off-street loading berths or accessory off-street parking, or lobby or storefront entrances; provided that no single lobby area shall occupy more than forty (40) feet of street frontage.

- (a) Display Window Area Street Wall Transparency. The Display Window Area Street Wall shall be appropriately glazed and transparent for attractiveness to pedestrians, as certified by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review. Article 11 of this Code applies to any painting or signs on the Display Window Area Street Wall, and to signs in the Display Window Area.
- (b) Display Window Area Usage. To a depth of at least two (2) feet behind the Display Window Area Street Wall there shall be: (i) an area for the display of goods and services available for purchase on the premises; or (ii) an area for exhibits and announcements. The provisions of this Section are not applicable to foyer space for cultural activities, restaurants, lobbies, or other active storefront uses.

(↑ As amended on May 9, 1996 and July 31, 1997.)

↑ **SECTION 45-17. Protection Area Design Review and Design Guidelines.**

Within the Broad Street Protection Area, the Blackstone Block Protection Area, the Markets Protection Area, and the State House Protection Area, depicted on Map 1H of this Code any Proposed Project for (a) the erection of a new building or addition or extension to an existing building or (b) exterior alteration changing the cornice line or Building Height of an existing building shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component).

1. Design Guidelines. To be consistent with the design guidelines established in this Section 45-17, a Proposed Project shall be designed such that the exterior proportions, scale, massing, facade design, materials, colors, and architectural detailing are compatible with the observable historical and architectural character of other buildings in the area within which the Proposed Project is located, and with streets and open spaces to which it is visually related, as identified in the Government Center/Markets District Plan. To preserve the character of the historical development pattern, facade design should be varied, and facades should be divided into modules or bays to reflect the lot width established by historic buildings within each area and to continue the established bay rhythm of each block. The retention of original or integral door and window elements is encouraged. Replaced elements shall follow historic precedents. Moving

openings, closing them, or altering their size or shape shall be avoided. Bricked in or filled openings that were open in the original design shall be restored whenever possible. New building entrances are encouraged, as long as they are consistent with the organization of the building's facade elements. Awnings, canopies, and shutters are encouraged if appropriate to the design of the building, and the design of such elements shall respect the historic elements in materials, size, scale, color, and the manner in which they are attached to the building. Materials, design, and colors for sash, doors, and jambs should be appropriate to the style of the building.

(↑As amended on May 9, 1996.)

SECTION 45-18. Off-Street Parking. Within the Government Center/Markets District, off-street parking facilities are not required in any Proposed Project. The provisions of Sections 23-9 and 23-10 shall govern any Proposed Project in the District for which off-street parking is provided.

↓**SECTION 45-19. Off-Street Loading.** Within the Government Center/Markets District, Article 24 of the Code shall govern the provision and design of off-street loading facilities for any structure or land not subject to Large Project Review. The provision and design of off-street loading facilities for the use of any structure or land which is subject to Large Project Review shall be determined through such review. Mitigation measures, as appropriate, may be required through Large Project Review to minimize the deleterious effects of any off-street loading facilities on adjacent properties.

(↑As amended on May 9, 1996.)

SECTION 45-20. Regulations. The Boston Redevelopment Authority may promulgate and amend from time to time regulations to administer this Article.

SECTION 45-21. Severability. The provisions of this Article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

SECTION 45-22. Definitions. Words and phrases defined in Appendix B to this Article shall have the meanings set forth in said Appendix B.

SECTION 45-23. Appendices. The following appendices are incorporated herein:

1. Appendix A - Ground Level Uses
2. Appendix B - Definitions

APPENDIX A to ARTICLE 45

Ground Level Uses

The following uses are Ground Level Uses, and are allowed uses within the Government Center/Markets District, provided that uses described in Use Item Numbers 34A and 38A of Table of Section 8-7 are forbidden. This list is intended to be illustrative of ground level uses and not exclusive.

- Antique stores
- Appliances, repair shops
- Appliances, sales
- Artists' supply and music stores
- Athletic goods stores
- Bakeries or pastry shops
- Bank branch offices
- Bank machines, limited to 25 linear feet
- Barber shops
- Beauty parlors
- Bicycle stores, rental or repair
- Book stores or card stores
- Cafes
- Candy stores
- Carpet, rugs, linoleum, or other floor covering stores
- Churches
- Cigar stores
- Clock or watch stores or repair shops
- Clothing stores, (men's, women's, children's apparel)
- Clubs, noncommercial
- Coffee shops
- Coin stores
- Community centers
- Dance halls, public
- Day care centers
- Delicatessen stores
- Department stores
- Diners
- Dressmaking shops, custom
- Drug stores
- Dry-cleaning establishments or laundromats
- Dry goods or fabric stores
- Fabric or yarn store
- Fire stations
- Fishing tackle or equipment stores or rental establishments

APPENDIX A to ARTICLE 45 (continued)

Florist shops
Food stores, including supermarkets, produce and grocery stores, markets,
health foods, delicatessens, prepared food/special food, spices and herbs,
coffees, teas, meat, fish, poultry, and cheese stores
Furniture stores
Furrier shops, custom
Gift shops
Hardware stores
Health clubs
Historical exhibits
Hobby shops
Hotels
Housewares
Household appliance repair shops
Ice cream stores
Interior decorating establishments
Jewelry shops
Kitchenware
Lamp shops
Leather goods or luggage stores
Liquor stores
Locksmith shops
Luggage stores
Millinery shops
Newsstands, enclosed
Office or business machine stores, sales or rental
Offices (only lobby space is allowed at grade on streets bounding blocks)
Optician or optometrist establishments
Orthopedic stores
Paint stores
Parish houses
Parks, public or private
Party shops
Perfume shops
Pet shops
Pharmacies
Phonographic repair shops
Photographic developing or printing establishments
Photographic equipment stores
Photographic studios
Photographic supply stores
Photostating establishments
Picture framing stores

APPENDIX A to ARTICLE 45 (continued)

Police stations
Post offices
Printing establishments
Radio appliance shop, repair or sales
Record stores
Recreational centers (noncommercial)
Residential uses as described in Section 45-14.3 (only lobby space is permitted at grade of streets bounding blocks)
Restaurants, not including take-out restaurant uses except as allowed in Section 45-14.3(u)
Schools
Sewing machine stores, selling household machines
Shoe repair and shoeshine shops
Shoe stores
Sign painting shops
Skating rinks, outdoor ice
Sporting goods stores
Sports shop
Stamp stores
Stationery stores
Tailor shops, custom
Taxi or limousine service, limited to 25 linear feet
Telegraph offices
Television repair shops
Ticket agency, limited to 25 linear feet
Tobacco stores
Tour operator
Toy stores
Travel agency, limited to 25 linear feet
Typewriter stores
Typewriter or other small business machine repair stores
Variety or convenience stores
Vehicle rental
Video or motion picture store, sale or rentals
Wallpaper stores

APPENDIX B to ARTICLE 45

Definitions

For the purposes of this Article only, except as provided herein, the following words and phrases shall have the meanings indicated.

1. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this Article, as set forth in Section 45-4, or the authorized agent of any such person or entity.
2. "Government Center/Markets District Plan" means the comprehensive plan, adopted on January 16, 1991, by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of the Code, which sets forth the planning policies, development controls, and design guidelines for the Downtown.
3. "Government Center/Markets District" means the area depicted in Map 1H of this Code.
4. "Ground Floor Ceiling Height" means the height of the building or structure under the floor structure of the second floor.
5. "Ground Level Uses" means the uses listed in Appendix A to this Article.
6. "Lot" as applied to Proposed Projects in the Custom House Area of the Government Center/Markets District, means a parcel or parcels whether or not platted, in single ownership or multiple ownership if a single person or entity is entitled to use or possess such parcels pursuant to leasehold or easement rights, and including the portion of any street where such person or entity may erect, rehabilitate or maintain any structure, including structures on, over or under such street, and all such area shall be included within the lot for purposes of calculating FAR. No structure lawfully existing shall become unlawful or nonconforming on account of the termination of such leasehold or easement rights. Elsewhere in the Government Center/Markets Districts, "Lot" has the meaning set forth in Article 2 of the Code.
7. "Maximum Aggregate Surface Area" means the portion, expressed as a percentage, of the surface area of the specified part of the Street Wall Plane, either above or below the ground floor ceiling height, affected by recesses, subject to the provisions of Section 45-16.2.

APPENDIX B to ARTICLE 45 (continued)

8. "Proposed Project" means the substantial demolition, erection, or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit. A Proposed Project may proceed in phases, and may include more than one building, structure, or use.
9. "Street Wall" means the exterior wall or portion of the exterior wall of a Proposed Project that faces a street (excluding public alleys) on which such Proposed Project is located.
10. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the highest occupied floor of a Proposed Project shall not exceed the specified height limit for the site by more than ten (10) feet.
11. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

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↓ ARTICLE 46

BULFINCH TRIANGLE DISTRICT
(↓ Article inserted on March 19, 1992*)

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*Date of public notice: January 2, 1992 (see St. 1956, c. 665, s. 5).

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(**Editor's Note:** This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 46-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the Bulfinch Triangle District as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this Code. The goals and objectives of this Article and the Bulfinch Triangle District Plan are: (1) to preserve the historic and architectural character of the Bulfinch Triangle District; (2) to restore its distinctive and significant street pattern; (3) to promote commercial, studio, residential, retail, and service uses in the Bulfinch Triangle District; and (4) to establish urban design standards which ensure that new development is compatible with existing buildings in design, scale, building materials, and landscaping.

SECTION 46-2. Recognition of the Bulfinch Triangle District Plan. In accordance with Section 27D-18 of this Code, which requires production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the Bulfinch Triangle District (Special Study Area No. 8), the Zoning Commission hereby recognizes the Bulfinch Triangle District Plan as the general plan for the Bulfinch Triangle District and as the portion of the general plan for the City of Boston applicable to the Bulfinch Triangle District. This Article is one of the means of implementing the Bulfinch Triangle District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 46-3. Physical Boundaries. The provisions of this Article are applicable only in the Bulfinch Triangle District. The boundaries of the Bulfinch Triangle District are as shown on a map entitled "Map 1J Bulfinch Triangle District (supplemental to 'Map 1 Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 46-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Bulfinch Triangle District and applies as specified in Section 4-1 regarding the conformity of structures and land to this Code. Application of the provisions of Article 27D to the Bulfinch Triangle District is rescinded on the effective date of this Article, except as provided below. Where conflicts exist between the provisions of this Article and the remainder of the Code, the provisions of this Article shall govern. For the Bulfinch Triangle District, except where specifically otherwise indicated in this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 23, of this Code. The following Proposed Projects, however, are exempt from the provisions of this Article and are governed by the rest of this Code, including Article 27D:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.

2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

SECTION 46-5. Bulfinch Triangle/Central Artery Area. Notwithstanding any contrary provision of this Article, the Bulfinch Triangle/Central Artery Area, as shown on "Map 1Xa" and "Map 1Xb," both entitled "Central Artery Special District (supplemental to 'Map 1, Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston," as amended, shall be governed by the applicable use, dimensional, and other requirements of Article 49, Central Artery Special District. In particular, the provisions of Sections 46-6, 46-8, 46-9, 46-10, and 46-11 shall not be applicable to the Bulfinch Triangle/Central Artery Area. The Central Artery Special District Plan, as that term is defined in Article 49, shall be part of the general plan for the Bulfinch Triangle District as it applies to the Bulfinch Triangle/Central Artery Area.

SECTION 46-6. Maximum Building Height and Floor Area Ratio. A Proposed Project within the Bulfinch Triangle District is allowed a maximum building height of eighty (80) feet and a floor area ratio (FAR) of 6; provided that any Proposed Project shall be allowed a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6. In addition, any Proposed Project shall be allowed a maximum FAR of eight (8) if all uses with street frontage located on the ground level are uses described in Appendix A to this Article, and such Proposed Project is subject to or has elected to comply with Large Project Review, has received a Certification of Compliance pursuant to Section 80B-6, and complies with the provisions of this Section 46-6.

1. Building Height in Substantial Accord with Maximum Building Height and FAR. The Board of Appeal may by exception to this Code, as provided in Article 6A and this Section 46-6.1, grant exceptions for building height and FAR in excess of the maximum building height and FAR established in this Section 46-6. The Board of Appeal shall grant such an exception for building height or FAR under this Section 46-6.1 only if it finds that: (a) the proposed height and FAR for the Proposed Project are in Substantial Accord with the maximum building height and FAR established in this Section 46-6; and (b) the Proposed Project and its height and massing are compatible with the surrounding area, in accordance with the design guidelines of Section 46-8; and (c) such an exception is consistent with the Bulfinch Triangle District Plan and the general plan for the City as a whole; and (d) such an exception is in harmony with the general purpose and intent of this Code; and (e) if such exception relates to a Development

Impact Project, as defined in Section 80B-7, the Applicant shall have complied with the requirements set forth in said Section 80B-7.

(↑As amended on May 9, 1996.)

SECTION 46-7. Establishment of Planned Development Areas Prohibited. Establishment of Planned Development Areas, as described in Section 3-1A.a of this Code, is prohibited in the Bulfinch Triangle District.

↓**SECTION 46-8. Bulfinch Triangle District Design Review, Design Guidelines, and Design Requirements.** Proposed Projects within the Bulfinch Triangle District for:

- (a) the erection of a new building, or the addition to or extension of an existing building; or
- (b) an exterior alteration affecting more than five hundred (500) square feet of the Street Wall Facade above the Ground Floor Ceiling Height of an existing building; or
- (c) an exterior alteration changing the cornice line, Street Wall height, or building height of an existing building

shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component). Notwithstanding any contrary provision of Section 80E-2.1, such review shall be applicable whether or not any such Proposed Project is subject to the jurisdiction of the Boston Landmarks Commission or any other architectural board or commission having design review authority and established pursuant to a general or special law of the Commonwealth of Massachusetts. The provisions of Article 6A shall be applicable to the provisions of this Section 46-8.

1. Design Guidelines. This Section 46-8.1 establishes design guidelines for the Bulfinch Triangle District.

- (a) Historic Buildings. The demolition of Historic Buildings is strongly discouraged. Historic Buildings should be renovated rather than replaced, so as to maintain the historic architectural character of the District. When a Historic Building is renovated, the existing facade fenestration should be retained and/or restored. In the event that restoration is not possible, replacement units should replicate the essential architectural characteristics of the existing windows, such as mullion depth and width, color, and predominant shadow lines. Where significant renovation occurs behind a historic building facade,

the renovation should be compatible with the historic character of the facade and the facade should be protected in situ during construction.

- (b) Compatibility with Historic Context. New buildings, rooftop additions, and facade renovations should be designed such that the exterior proportions, scale, massing, window treatment, materials, colors, and architectural detailing are compatible with the observable architectural character of the existing late 19th- and early 20th-century masonry warehouse structures in the Bulfinch Triangle District. To preserve a lot-by-lot appearance, facade ornamentation should be varied, and facades should be divided into modules, to reflect the lot width established by Historic Buildings within the Bulfinch Triangle District and to continue the established rhythm of each block.
- (c) Base to Height Ratio. Proposed Projects should be consistent with the Bulfinch Triangle District's pattern of building masses, which meet the streets with discretely organized facades, each of which contains local symmetries. Vertically oriented facades, which are characteristic of the District, are encouraged.
- (d) Storefront Details and Signage. Cast-iron, masonry, and/or granite storefront details should be preserved and restored. Flush painted signs are encouraged.
- (e) Recessed Store Entrances. For all new buildings, entrances to Ground Level Uses should be recessed in a manner consistent with traditional storefront entrances in the Bulfinch Triangle District.
- (f) Base and First Floor Cornice Line. New construction should have a pronounced cornice line or belt course separating the ground floor from the upper floors and should create a visually strong base.
- (g) Upper Cornice. New structures should have pronounced upper cornices which are consistent with upper cornices on existing structures and which create a sense of finality to the building's top. Typical cornice materials, such as masonry/stone or copper, should be used.
- (h) Solid to Void Ratios. Solid to void ratios should emphasize the strong vertical and horizontal patterns that are characteristic of historic architecture in the District.
- (i) Windows. Windows which recede from the face of the building, arched windows or window heads, and windows accented by lintels and sills are encouraged to the extent that they are consistent with

and reinforce the architectural and historic character of the Bulfinch Triangle District. Large, undifferentiated panes of glass are not appropriate except for storefronts. New masonry window openings in existing buildings are discouraged, particularly to the extent that they are incompatible with the character of the traditional building facades in the District.

- (j) Building Materials. Primary building materials should be masonry, including brick, limestone, terra cotta, sandstone, and granite. New materials (e.g., architectural precast concrete) should be consistent in surface texture and color with existing traditional materials.
- (k) Landscaping. New construction and rehabilitation should enhance the pedestrian nature of the Bulfinch Triangle District by lending human scale, texture, and interest at street level through appropriate landscaping and street furniture improvements. Such improvements include brick sidewalks, benches, clocks, and light fixtures.

2. Specific Design Requirements. All Proposed Projects within the Bulfinch Triangle District shall comply with the specific design requirements established in this Section 46-8.3.

- (a) Rooftop Additions; Rooftop Mechanical Units. No structure designed or used for human occupancy, access, or storage shall be erected or enlarged on the roof of any building within the Bulfinch Triangle District, unless after public notice and hearing and subject to Sections 6A-2, 6A-3, and 6A-4 the Board of Appeal grants permission therefor. Where rooftop additions, rooftop mechanical units, and elevator penthouses align with masonry walls of existing structures, the walls of such rooftop structures should be of masonry materials and contribute to the building's established character. Elsewhere, the walls of such rooftop structures should be of metal.
- (b) Street Wall Continuity. A Street Wall of any Proposed Project shall be built to be coextensive with the building line, as defined in Clause 7A of Section 2-1, of the block on which the Street Wall faces. If there is no determinable building line of said block, then said Street Wall shall be built at a depth from the street line equal to that of the building line farthest from the street line of the two blocks adjacent to said block, facing onto the same street. If there is no determinable building line of either of said adjacent blocks, then (i) if the Proposed Project is subject to or has elected to comply with Large Project Review, an appropriate Street Wall location shall be determined in such review, or (ii) otherwise, the Proposed Project shall be deemed to be subject to the Design Component of Small Project Review for

the limited purpose of determining an appropriate Street Wall location. A Proposed Project shall comply with the requirements of this Section 46-8.3(b) with respect to each facade facing a public street, excluding alleys and private ways.

For Proposed Projects that are subject to or have elected to comply with Large Project Review, recesses and bays shall be permitted if appropriate to the creation of visually interesting designs, provided that the facade remains compatible with its historical and architectural surroundings and visual continuity in the block front is preserved, as certified by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review.

- (c) Display Window Area Regulations. The provisions of this Section 46-8.3(c) apply only to Street Walls that face Causeway Street, Merrimac Street, North Washington Street, or Canal Street, and that are part of Proposed Projects for new construction of fifty thousand (50,000) or more square feet of gross floor area. The term "Display Window Area" means that area of any such Street Wall that is between a height of: (i) two (2) feet above the ground floor, and (ii) either the Ground Floor Ceiling Height or fourteen (14) feet, whichever is lower. The Display Window Area excludes any area of Street Wall serving as ingress or egress to the interior of the Proposed Project, including off-street loading berths, accessory off-street parking, and lobby and storefront entrances; provided that no single lobby area shall occupy more than forty (40) feet of street frontage.
 - (i) Display Window Area Street Wall Transparency. The Display Window Area shall be sufficiently and appropriately glazed and transparent to augment the quality of the pedestrian environment, as certified by the Boston Redevelopment Authority in accordance with the Urban Design Component of Large Project Review.
 - (ii) Display Window Area Usage. To a depth of at least two (2) feet behind the Display Window Area Street Wall, there shall be (a) an area for the display of goods and services available for purchase on the premises, or (b) an area for exhibits and announcements. The provisions of this Section 46-8.3(c)(ii) are not applicable to foyer space for cultural uses, restaurants, or other active storefront uses.
- (d) Causeway Street Special Setback Regulations. On the south side of Causeway Street, building height is regulated as for the remainder of the Bulfinch Triangle District, except that if the building height of a

Proposed Project is greater than eighty (80) feet, a twenty-five (25) foot setback from the Street Wall is required, beginning at a building height of sixty-five (65) feet and extending to the top of the building.

(↑As amended on May 9, 1996 and July 31, 1997.)

↑SECTION 46-9. **Bulfinch Triangle District Use Regulations.** In the Bulfinch Triangle District, the use of land and structures is regulated as provided in this Section 46-9. The provisions of Article 8, except Section 8-6, apply only as specified in this Section 46-9. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 46-9.

1. Inclusion of Day Care Facilities. The provisions of this Section 46-9.1 apply only to Proposed Projects which exceed a building height of eighty (80) feet, or an FAR of six (6), or both. Any Proposed Project having a gross floor area (not including the floor area devoted to those Residential Uses, Community Uses, or Cultural Uses allowed pursuant to Section 46-9.3) that equals or exceeds one hundred fifty thousand (150,000) square feet shall devote to day care facilities an amount of floor area equal to the amount listed below in Table A of this Section 46-9.1. For the purposes of this Section 46-9.1 and Table A only, floor area devoted exclusively to hotel uses shall be multiplied by 0.5 before being used in the calculation of required day care facilities. An Applicant for a Proposed Project that is subject to the provisions of this Section 46-9.1 may fulfill its obligations under this Section 46-9.1 by (a) creating such facilities on site, or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project, provided that such facilities are located within the Bulfinch Triangle District or the North Station Economic Development Area. Any Proposed Project that is subject to the provisions of this Section 46-9.1 shall devote to on-site day care facilities an amount of floor area equal to at least four thousand (4,000) square feet, or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this Section 46-9.1 shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this Section 46-9.1, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE A

Provision of Day Care Facilities

<u>Size of Proposed Project (Gross Floor Area)</u>	<u>Minimum Day Care Facilities (Gross Floor Area)</u>
150,000 - 200,000 s.f.	2% of gross floor area
200,001 - 500,000 s.f.	4,000 s.f.
500,001 - 1,000,000 s.f.	8,000 s.f.
More than 1,000,000 s.f.	12,000 s.f.

2. Allowed Uses. No land or structure in the Bulfinch Triangle District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use not specified (a) in this Section 46-9.2 (Allowed Uses), or (b) in Section 46-9.3 (Conditional Uses). Any use specified in this Section 46-9.2 shall be allowed as a matter of right, subject only to the provisions of this Section 46-9, including, without limitation, Section 46-9.1, provided that any use specified in this Section 46-9.2 shall be conditional when accessory or ancillary to an institutional use specified in Section 46-9.3 (Conditional Uses).
- (a) Restaurant Uses. Lunchroom, restaurant, cafeteria, or other place for the service or sale of food or drink for on-premises consumption, but excluding take-out restaurant uses except as provided in Section 46-9.3(c).
 - (b) Cultural Uses. Concert hall, art gallery; museum; theater, not including motion picture or video theater; auditorium; performance space; music rehearsal studio; artist's studio or work space.
 - (c) Motion picture or video theater, but not drive-in theater, subject to the provisions of Section 46-9.4.
 - (d) Office Uses. Office of community service organization; medical or dental office; business or professional office; real estate, insurance, or other agency or government office; office building; post office; bank (including automatic teller machines but not including drive-in bank); or similar establishment.
 - (e) Hotel Uses.

- (f) Community Uses. Adult education center; day care center; family care center; community health center; community center, settlement house, or community service facility.
- (g) Educational Uses. Nursery school, kindergarten, elementary school, or secondary school.
- (h) Recreational Uses. Private grounds for games and sports; other social, recreational, or sports center whether or not conducted for profit; private club operated for members only (including health or athletic club and quarters of fraternal or sororal organizations); maintenance and operation of up to four (4) amusement game machines in a private club, dormitory, fraternity or sorority house, or similar noncommercial establishment, or in any commercial establishment.
- (i) Public Service Uses. Public service pumping station; substation; automatic telephone exchange; fire station; or police station; subject to St. 1956, c. 665, s. 2.
- (j) Wholesale Uses. Office or display or sales space of a wholesale, jobbing, or distributing house, provided that not more than twenty-five percent (25%) of gross floor area devoted to this purpose is used for assembling, packaging, and storing merchandise.
- (k) Service and Trade Uses. Video or film production studio; barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop, provided that in laundries and cleaning establishments, only nonflammable solvents are used for cleaning; framer's studio; caterer's establishment; photographer's studio; printing plant; taxidermist's shop; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; key and lock shop; express mail operation; ticket outlet; funeral home; undertaker's establishment; mortuary; animal hospital or clinic; or other similar service or trade use.
- (l) Ground Level Uses. Uses described in Appendix A hereto.
- (m) Local Retail Uses. Store primarily serving the local retail business or service needs of the neighborhood, including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, packaged alcoholic beverages, drugs, tobacco products, clothing, dry goods, books, flowers, paint and other artist's supplies, hardware and

other minor household appliances, furniture, books, and photographic equipment.

- (n) General Retail Uses. Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage.
- (o) Institutional Uses. Place of worship, monastery, convent, or parish house; library; elder care facility, orphanage, or similar institution not for correctional purposes and not providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons.
- (p) Research laboratory, provided that, for the keeping of laboratory animals, other than household pets, every enclosure is sufficient to prevent a nuisance to any adjacent residence or eleemosynary institution, all resulting noise, dust, fumes, gases, odors, and refuse are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to public health or safety, and such use complies with all applicable guidelines and standards promulgated by the National Institutes of Health for the care and use of laboratory animals.
- (q) Communications Uses. Radio and television studio; operation of fiber optic and other related communication equipment; telecommunication operations; data retrieval and transmission operations.
- (r) Urban Plazas and Parks. Passive and recreational uses accessible from adjoining streets, with facilities and structures appropriate to urban plazas and parks, including benches and other seating facilities, pools, fountains, works of art, plantings, and other features.
- (s) Light Manufacturing Uses. The design, development, packaging, assembly, repairing, servicing, testing, fabrication, or handling of products, including, but not limited to, the following, provided that all machinery and equipment shall be so installed and maintained, and all activity in connection with such use shall be so conducted, that noise, smoke, dust, odor, and all other similar objectionable factors shall not cause a nuisance or injury to persons in the vicinity:
 - (1) ceramic products, including pottery and glazed tile
 - (2) electronic and communication products, including, but not limited to, computer equipment, sound equipment, and household appliances

- (3) instruments for engineering, medical, dental, scientific, photographic, optical, or other similar professional use
 - (4) furniture or musical instruments
 - (5) photographic supplies
 - (6) supplies related to printing or engraving
 - (7) pharmaceutical or diagnostic products
 - (8) distribution of paper products, plumbing and interior decorating supplies and equipment
- (t) Accessory Uses. Subject to the limitations and restrictions of Article 10, and limited to: (i) a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a hotel use allowed under Section 46-9.2(e); (ii) accessory swimming pool, health club, or tennis court; (iii) sale over the counter, wholly incidental to a restaurant or hotel use allowed under Section 46-9.2(a) or (e), of food or drink prepared on premises for off-premises consumption; and (iv) the storage of flammable liquids and gases incidental to a lawful use.
3. Conditional Uses. No land or structure in the Bulfinch Triangle District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Section 46-9.3. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the regulations set forth in this Section 46-9. The continued right to a conditional use is dependent upon maintaining the character and extent of operations and structures.
- (a) Parking Uses. Parking lot or parking garage, except for accessory parking uses allowed under Section 46-9.2(t).
 - (b) Vehicular Uses. Repair garage, gasoline service station, or car wash, provided that all working, painting, lubricating, and making of repairs is carried on inside a building; that any auto body shop, car wash, repair shop, or paint shop is sufficiently sound-insulated to confine all noise to the lot; and that all flashing, fumes, gases, smoke, and vapor are effectively confined to the lot; and further provided that there is no outside storage of damaged, disabled, or unregistered motor vehicles for a period of more than one month, and that there is no dismantling of motor vehicles or sale of used parts on the lot.

- (c) Take-Out Restaurant Uses. Sale over the counter, not wholly incidental to a restaurant or hotel use allowed under Section 46-9.2(a) or (e), of food or drink prepared on premises for off-premises consumption, or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
- (d) Residential Uses. Multifamily dwelling; artist's live/work space; apartment house; group residence, limited; lodging or boarding house; temporary dwelling structure; group care residence, general; and any dwelling converted for more families, provided that any nonconformity of such structure as to floor area ratio is no greater after conversion than prior to conversion. Residential uses include any affordable dwelling units, including but not limited to rental units, condominiums, and limited equity share cooperatives.
- (e) Wholesale Uses. Wholesale business, including accessory storage in roofed structures; or office, display, or sales space of a wholesale, jobbing or distributing house where more than twenty-five percent (25%) of gross floor area devoted to this use is used for assembling, packaging, and storing merchandise.
- (f) Transportation Uses. Bus terminal; bus station; subway station; railroad passenger station; airline shuttle service; or helicopter landing facility.
- (g) Recreational Uses. The maintenance and operation of more than four (4) amusement game machines in a private club, dormitory, fraternity or sorority house, or similar noncommercial establishment, or in any commercial establishment.
- (h) Institutional Uses. College or university granting degrees by authority of the Commonwealth; fraternity or sorority house or dormitory; trade, professional, or other school; machine shop or other noisy activity accessory to a school, college, or university, provided that such use is adequately sound-insulated to protect the neighborhood from unnecessary noise; library accessory to an institutional use that is not allowed pursuant to Section 46-9.2(o); research laboratory accessory to an institutional use that is not allowed pursuant to Section 46-9.2(o), provided that, for the keeping of laboratory animals, other than household pets, every enclosure is sufficient to prevent a nuisance to any adjacent residence or eleemosynary institution, all resulting noise, dust, fumes, gases, odors, and refuse are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to public health or safety, and such use complies with all applicable guidelines and standards promulgated by the National Institutes of Health for the

care and use of laboratory animals; hospital or sanatorium; detention home; elder care facility, orphanage, or similar institution not for correctional purposes providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; clinic not accessory to a main use.

- (i) Service Uses. Check cashing business.
- (j) Changes of Use. Any change of use from a residential use to a non-residential use.
- (k) Accessory Uses. Subject to the limitations and restrictions of Article 10, and limited to (i) a garage or parking space for occupants, employees, customers, students, and visitors, where such use is not accessory to a hotel use allowed under Section 46-9.2; (ii) car wash, valet service, or automobile repair service accessory to a parking garage; (iii) clinic or professional office accessory to a hospital or sanatorium; and (iv) motor vehicle or trailer rental agency accessory to a hotel use, provided that no rental vehicles or trailers are parked on the street and that exterior lighting is arranged to shine downward and away from residences.
- (l) Ancillary Uses. Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.

- 4. Forbidden Uses. No land or structure in the Bulfinch Triangle District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use not specified in Section 46-9.2 or Section 46-9.3 as an allowed or conditional use, except for such nonconforming uses as may be allowed to be continued under the provisions of Article 9. Without limitation, uses described in Use Items No. 34A and No. 38A of Section 8-7 shall be forbidden uses in the Bulfinch Triangle District.

(↑ As amended on September 30, 1993, October 6, 1994, and September 20 and November 21, 1996.)

SECTION 46-10. Off-Street Parking. Within the Bulfinch Triangle District, off-street parking facilities are not required in any Proposed Project. The provisions of Sections 23-8, 23-9, and 23-10 shall govern any Proposed Project in the Bulfinch Triangle District for which off-street parking is provided.

↓SECTION 46-11. **Off-Street Loading.** Within the Bulfinch Triangle District, Article 24 of the Code shall govern the provision and design of off-street loading facilities for the use of any structure or land that is not subject to Large Project Review. The provision and design of off-street loading facilities for the use of any structure or land that is subject to Large Project Review shall be determined through such review. Mitigation measures, as appropriate, may be required through Large Project Review to minimize the deleterious effects on adjacent properties of any off-street loading facilities.

(↓As amended on May 9, 1996.)

SECTION 46-12. **Regulations.** The Boston Redevelopment Authority may promulgate and amend from time to time regulations to administer this Article.

SECTION 46-13. **Severability.** The provisions of this Article are severable, and if any provision of this Article shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

SECTION 46-14. **Definitions.** Words and phrases defined in Appendix B to this Article shall have the meanings set forth in said Appendix B.

SECTION 46-15. **Appendices.** The following appendices are incorporated herein:

1. Appendix A - Ground Level Uses
2. Appendix B - Definitions

APPENDIX A to ARTICLE 46

Ground Level Uses

The following uses are Ground Level Uses, and are allowed uses within the Bulfinch Triangle District, provided that uses described in Use Items No. 34A and No. 38A of Section 8-7 are forbidden. This list is intended to be illustrative of Ground Level Uses and not exclusive.

- Antique stores
- Appliances, repair shops
- Appliances, sales
- Art galleries, commercial and nonprofit
- Art metal craft shops
- Art needle work shops
- Artists' supply and music stores
- Athletic goods stores
- Bakeries or pastry shops
- Bank branch offices
- Bank machines, provided that the ground level street frontage of a bank facility containing only bank machines is limited to twenty five (25) feet
- Barber shops
- Beauty parlors
- Bicycle stores, rental or repair
- Book stores or card stores
- Cafes
- Candy stores
- Carpet, rugs, linoleum, or other floor covering stores
- Churches
- Cigar stores
- Clock or watch stores or repair shops
- Clothing retail establishments
- Clothing stores (men's, women's, children's apparel)
- Clubs, noncommercial
- Coffee shops
- Coin stores
- Community centers
- Costume rental establishments
- Dance halls, public
- Day care centers
- Delicatessen stores
- Department stores
- Diners
- Dressmaking shops, custom

APPENDIX A to ARTICLE 46 (continued)

Drug stores
Dry cleaning establishments or laundromats
Dry goods or fabric stores
Electronic, video, or audio sales or repair
Entrance/exit to public transit facilities
Fabric or yarn store
Fire stations
Fishing tackle or equipment stores or rental establishments
Florist shops
Food stores, including supermarkets, produce and grocery stores and markets, delicatessens, and stores selling prepared food/special food, health foods, spices and herbs, coffees, teas, meat, fish, poultry, cheese, and the like
Furniture stores
Furrier shops, custom
Gift shops
Hair products for headwear
Hardware stores
Historical exhibits, open to the public generally
Hobby shops
Housewares
Household appliance repair shops
Ice cream stores
Interior decorating establishments
Jewelry shops
Kitchenware
Lamp shops
Leather goods or luggage stores
Libraries, open to the public generally
Lobby of health club or gym, hotel, offices, or residence, provided the Lobby Entrance Area does not exceed twenty-five (25) feet.
Locksmith shops
Luggage stores
Millinery shops
Motion pictures or video production studio
Museums, open to the public generally
Music stores
Musical instruments, repair
Newsstands, enclosed
Office or business machine stores, sales or rental
Optician or optometrist establishments
Orthopedic stores
Paint stores
Parish houses

APPENDIX A to ARTICLE 46 (continued)

Parks, public or private
Party shops
Perfume shops
Pet shops
Photographic developing or printing establishments
Photographic equipment stores
Photographic studios
Photographic supply stores
Photostating establishments
Picture framing stores
Police stations
Post offices
Printing establishments
Radio appliance shop, repair or sales
Record stores
Recreational centers
Restaurants, provided that take-out restaurant uses are conditional as
provided in Section 46-9.3
Schools
Sewing machine stores, selling household machines
Shoe repair and shoeshine shops
Shoe stores
Sign painting shops
Skating rinks, outdoor ice
Sporting goods stores
Sports shop
Stamp stores
Stationery stores
Studios: music, dancing, visual arts, or theatrical
Tailor shops, custom
Telegraph, FAX, or express mail offices
Television repair shops
Theater
Ticket sales
Tobacco stores
Tour operator
Toy stores
Travel agency
Typewriter stores
Typewriter or other small business machine repair stores
Variety or convenience stores
Video or motion picture store, sale or rentals
Wallpaper stores

APPENDIX B to ARTICLE 46

Definitions

For the purposes of this Article only, the following words and phrases shall have the meanings indicated.

1. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this Article, as set forth in Section 46-4, or the authorized agent of any such person or entity.
2. "Bulfinch Triangle District" means the area, so entitled, depicted on Map 1J of this Code.
3. "Bulfinch Triangle District Plan" means the comprehensive plan, adopted by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of the Code, which sets forth the planning policies, development controls, and design guidelines for the Bulfinch Triangle District, as defined therein.
4. "Central Artery Special District Plan" means the comprehensive plan, adopted by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of the Code, which sets forth the planning policies, development controls, and design guidelines for the Central Artery Special District, as defined therein.
5. "Ground Floor Ceiling Height" means the height of the underside of the floor structure of the second floor.
6. "Ground Level Uses" means the uses listed in Appendix A to this Article.
7. "Historic Building" means any building listed in the Boston Landmarks Commission Survey of Boston as a Category One, Category Two, Category Three, or Category Four building.
8. "Lobby Entrance Area" means the frontage at street level of the main lobby of a structure, most usually those with office, residential, or hotel uses.
9. "Proposed Project" means the erection, reconstruction, extension, alteration, or substantial demolition of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit. A Proposed Project may proceed in phases and may include more than one building, structure, or use.

APPENDIX B to ARTICLE 46 (continued)

10. "Street Wall" means the exterior wall or portion of the exterior wall of a Proposed Project that faces a street (excluding public alleys and courts) on which such Proposed Project is located.
11. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the highest occupied floor of a Proposed Project shall not exceed the specified height limit for the site by more than six (6) feet.
12. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

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↓ARTICLE 47A

CAMBRIDGE STREET NORTH DISTRICT

(↓Article inserted on October 28, 1992*)

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*Date of public notice: September 18, 1992 (see St. 1956, c. 665, s. 5).

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Appendix A - Ground Level Uses

Appendix B - Definitions

Appendix C - Historic Buildings that
Contribute to the Architectural
Significance of the District

(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 47A-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations, as required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this Code, for that portion of the area covered by the Cambridge Street Plan that is located north of the center line of Cambridge Street, established by this Article as the Cambridge Street North District. Because the Cambridge Street Plan, which addresses the relationship between the north and south sides of Cambridge Street, recognizes that the north side of Cambridge Street requires different zoning regulations from the south side, this Article does not establish zoning regulations for the portion of the area covered by the Cambridge Street Plan that lies south of the center line of Cambridge Street. The goals and objectives of this Article and the Cambridge Street Plan are to: (1) preserve and maintain the historic character of the area; (2) to create opportunities for an active pedestrian street life; (3) to provide for institutional growth through an open planning process and in a manner that is compatible with existing District uses; (4) to direct development in a way that promotes balanced growth for Boston; and (5) to provide for streetscape and landscape improvements which enhance the natural and built environment.

SECTION 47A-2. Recognition of the Cambridge Street Plan. In accordance with Section 27D-18 of this Code, which requires production of comprehensive planning policies, development controls, and design guidelines for Special Study Areas in the Downtown Interim Planning Overlay District, including the Cambridge Street District (Special Study Area No. 6), the Zoning Commission hereby recognizes the Cambridge Street Plan with respect to the north side of Cambridge Street as the general plan for the Cambridge Street North District and as the portion of the general plan for the City of Boston applicable to the Cambridge Street North District established herein. This Article is one of the means of implementing the Cambridge Street Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 47A-3. Physical Boundaries. The provisions of this Article are applicable only in the Cambridge Street North District. The boundaries of the Cambridge Street North District are as shown on a map entitled, "Map 1K Cambridge Street North District (supplemental to 'Map 1 Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 47A-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Cambridge Street North District and applies as specified in Section 4-1 regarding the conformity of buildings and land to this Code. Exceptions to the provisions of this Article, pursuant to Article 6A, shall not be available except to the extent expressly provided in this Article or Article 6A. Application of the provisions of Article 27D to the Cambridge Street North District is rescinded on the effective date of this Article, except as provided below. Where conflicts exist between this Article and the remainder of this Code, the provisions of

this Article shall govern. For the Cambridge Street North District, except where specifically indicated in this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 23 of this Code. The following Proposed Projects are exempt from the provisions of this Article and are governed by the rest of this Code, including Article 27D.

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

↓SECTION 47A-5. **Establishment of Protection Areas, Restricted Growth Areas, and Medium Density Area.**

1. Protection Areas. This Section 47A-5.1 establishes two Protection Areas within the Cambridge Street North District. The two Protection Areas are established in order to protect the existing scale of buildings within the Protection Areas so as to minimize contrasts of scale with the smaller buildings on the south side of Cambridge Street, encourage greater visual definition of Cambridge Street, and preserve a scale of development compatible with the concentration of the historic buildings within the Protection Areas. The two Protection Areas are designated on Map 1K of this Code and are identified below. Any other provision of this Article or Code notwithstanding, Proposed Projects within a Protection Area are limited to the building height and Floor Area Ratio (FAR) specified for such Protection Area, as follows:
 - (a) Cambridge Street North Side Protection Area. Within that portion of the Cambridge Street North District depicted on Map 1K of this Code as the "Cambridge Street North Side Protection Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed; provided that a maximum FAR of five (5) shall be allowed if (i) the Proposed Project includes, on its ground level, any of the Ground Level Uses listed in Appendix A to this Article, and access to such uses may be had directly from Cambridge Street, with or without a ramp or stairs, but without entering a lobby, and (ii) the Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

- (b) Charles Street Jail South Protection Area. Within that portion of the Cambridge Street North District depicted on Map 1K of this Code as the "Charles Street Jail South Protection Area," a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of five (5) are allowed.
- 2. Restricted Growth Areas. This Section 47A-5.2 establishes two Restricted Growth Areas within the Cambridge Street North District in order to protect existing moderately scaled development:
 - (a) Blossom Street Restricted Growth Area. Within that portion of the Cambridge Street North District depicted on Map 1K of this Code as the "Blossom Street Restricted Growth Area," a maximum building height of eighty (80) feet and a maximum FAR of six (6) are allowed.
 - (b) North Grove Street Restricted Growth Area. Within that portion of the Cambridge Street North District depicted on Map 1K of this Code as the "North Grove Street Restricted Growth Area," a maximum building height of sixty-five (65) feet and a maximum FAR of four (4) are allowed.

Notwithstanding any contrary provision of this Section 47A-5.2, a maximum building height of one hundred (100) feet and a maximum FAR of seven (7) shall be allowed within the Blossom Street Restricted Growth Area and the North Grove Street Restricted Growth Area if a Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

- 3. Medium Density Area. This Section 47A-5.3 establishes one Medium Density Area within the Cambridge Street North District. The Medium Density Area is designated on Map 1K of this Code as the "Charles Street Jail North Medium Density Area." Within the area so designated, a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of five (5) are allowed; provided that a maximum building height of one hundred fifty-five (155) feet is allowed if a Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(↑As amended on May 9, 1996.)

↓SECTION 47A-6. **Establishment of Areas Within Which Planned Development Areas May be Permitted.** Planned Development Areas ("PDAs"), as described in Section 3-1A.a, are permitted throughout the Cambridge Street North District except in that portion of the Cambridge Street North Side Protection Area located east of the Blossom Street Restricted Growth Area and east of the westerly

boundary of the property at 151 Cambridge Street (West End Branch of Boston Public Library). The purposes for establishing these areas as areas in which a PDA may be permitted are to establish a more flexible zoning law; to allow for the diversification and expansion of Boston's economy through the expansion of state-of-the-art medical and scientific research and treatment facilities, while ensuring public benefits and quality urban design by providing planning and design controls; and to encourage development that knits together the surrounding neighborhoods through a new urban design for the area.

1. Consistency with Section 3-1A; Review and Approval Requirements. Any application for Development Plan approval for a Proposed Project within the areas of the Cambridge Street North District where PDAs are permitted is subject to the provisions of Subsection 3-1A.a and this Section 47A-6 through Section 47A-9. See Article 80 concerning the applicability of Planned Development Area Review.
2. Applicability of Design Guidelines. Any application for Development Plan approval for a Proposed Project within the area of the Cambridge Street North Side Protection Area where PDAs are permitted is subject to the provisions of Section 47A-10.
3. Reconstruction of Pre-existing Structures. A Proposed Project for the reconstruction of a structure in existence in a PDA as of the date of Development Plan approval and described in said Development Plan, or of a structure constructed pursuant to said Development Plan, shall be determined by the Boston Redevelopment Authority to be consistent with said Development Plan, provided that said reconstruction is substantially similar to the original structure. Said reconstruction, unless described as part of the original Proposed Project in said Development Plan, shall constitute a separate Proposed Project for all purposes hereunder.

(↑As amended on May 9, 1996.)

SECTION 47A-7. Planned Development Area: Use and Dimensional Regulations. The land use and dimensional regulations for a PDA are established by this Section 47A-7.

1. Use Regulations. Proposed Projects within a PDA are subject to the use regulations set forth in Section 47A-12, except to the extent those regulations are expressly modified by an approved Development Plan and except that those institutional uses, accessory uses, and ancillary uses specified as conditional in paragraphs (g), (h), (k), (l), and (m) of Section 47A-12.4 shall be allowed as a matter of right, subject to the provisions of the applicable approved Development Plan, and the

provisions of Section 47A-12.1, concerning Ground Level Uses, shall not apply.

2. Dimensional Regulations. The dimensional requirements for a Proposed Project within a PDA shall be as set forth in the applicable approved Development Plan, provided that the building height and FAR for such Proposed Project shall not exceed the limits set forth in Table A. For the purposes of this Section 47A-7.2, FAR shall be computed as though the land within a PDA were in single ownership, notwithstanding actual ownership patterns or changes in ownership occurring after the approval of a Development Plan for the PDA.

TABLE A

**Dimensional Regulations
Planned Development Areas
Cambridge Street North District**

	<u>Maximum Building Height</u>	<u>Maximum FAR</u>
Charles Street Jail South Protection Area	125 feet	5
Charles Street Jail North Medium Density Area	155 feet	5
North Grove Street Restricted Growth Area	100 feet	7
Blossom Street Restricted Growth Area	100 feet	7
Cambridge Street North Side Protection Area: portion west of property at 151 Cambridge Street (West End Branch of Boston Public Library)	65 feet	5

↓SECTION 47A-8. **Planned Development Area: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(↑ As amended on May 9, 1996 and July 31, 1997.)

↓ **SECTION 47A-9. Planned Development Area: Public Benefit Criteria.** The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this Article if the Development Plan proposes a plan for public benefits including one or more of the following: (a) the creation or retention of job opportunities and neighborhood economic development opportunities, in accordance with the provisions of Section 47A-9.1, below; (b) the diversification and expansion of Boston's economy in areas of economic activity that promote the development of state-of-the-art medical facilities, including facilities for treatment, diagnosis, and research and development of new technology for these purposes, in accordance with the provisions of Section 47A-9.2, below; or (c) the provision of substantial street improvements in accordance with the provisions of Section 47A-9.3, below. Where a Development Plan includes a Proposed Project, or any part thereof, within the Cambridge Street North Side Protection Area, the Boston Redevelopment Authority also shall consider the design guidelines set forth in Section 47A-10.2 for such Protection Area in reviewing such portions of the Development Plan.

1. Development Plan Approval for the Creation of New Job Opportunities. The Boston Redevelopment Authority may approve a Development Plan proposing creation of new job opportunities if it determines that: (a) employment positions in the Proposed Project are newly created in the Cambridge Street North District, or (b) the Development Plan provides for facilitating community access to job opportunities created by the Proposed Project.
2. Development Plan Approval for Diversification and Expansion of Boston's Economy. The Boston Redevelopment Authority may approve a Development Plan proposing diversification and expansion of Boston's economy if at least twenty percent (20%) of the gross floor area of the Proposed Project is dedicated to or supportive of uses such as, but not limited to, the following: (a) health care services, including hospital uses, clinics, and medical, dental, or similar professional offices and related diagnostic and treatment facilities; (b) research, development, and production of pharmaceutical and biomedical products; (c) the design, development, fabricating, and testing of instruments for medical, dental, scientific, optical, engineering, or other similar professional use; or (d) other scientific research and development uses, including laboratories and facilities for theoretical, basic, and applied research, product development and testing, prototype fabrication, or production of experimental products. Examples of uses which shall be considered "supportive of" the uses enumerated in subparagraphs (a), (b), (c), and (d) above include, but are not limited to: office space occupied by private entities engaged in such

uses or occupied by governmental entities regulating such uses; hotel, conference, or convention facilities; and educational facilities providing instruction in fields related to such uses.

3. Development Plan Approval for the Provision of Street Improvements. The Boston Redevelopment Authority may approve a Development Plan providing, either directly or through funding, for substantial street improvements to streets adjacent to and in the vicinity of the PDA. Such street improvements must be consistent with any applicable street improvement regulations or guidelines and must be sufficient, as determined by the Boston Redevelopment Authority, to improve the appearance, condition, quality of design and materials, and accessibility and useability of the affected streets by pedestrians, taking into account increased vehicular and pedestrian flows.

(↑As amended on May 9, 1996.)

↑SECTION 47A-10. **Design Review and Design Guidelines for Cambridge Street North Side Protection Area.** Within the Cambridge Street North Side Protection Area, any Proposed Project for the erection of a new building, or for the addition or extension to an existing building, shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component). Notwithstanding any contrary provision of Section 80E-2.1, such review shall be applicable whether or not any such Proposed Project is subject to the jurisdiction of the Boston Landmarks Commission or any other architectural board or commission having design review authority and established pursuant to a general or special law of the Commonwealth of Massachusetts. The provisions of Article 6A shall be applicable to the provisions of this Section 47A-10.

1. Design Guidelines. This Section 47A-10.1 establishes design guidelines for the Cambridge Street North Side Protection Area.
 - (a) Historic Buildings and Buildings which Contribute to the Architectural Significance of the Cambridge Street North Side Protection Area. The Cambridge Street North Side Protection Area contains many buildings and portions of buildings that have historic interest and make important contributions to the architectural character of the Protection Area. These buildings and portions of buildings are listed in Appendix C hereto. Such buildings and portions of buildings should be renovated rather than replaced. Accordingly, the existing facades of such buildings and portions of buildings should be retained and restored, and in the event that the restoration of a facade is not practicable, any replacement facade should replicate the essential architectural characteristics and elements of the original facade.

- (b) Street Walls. To give greater visual definition to Cambridge Street, the construction of infill buildings on vacant lots, and the addition to or replacement of existing structures whose Street Walls are lower than the maximum Street Wall height allowed by Section 47A-11.2, should be encouraged.
- (c) Windows. In Street Walls facing Cambridge Street, large, undifferentiated panes of glass generally are not appropriate. Accordingly, windows in such Street Walls should be set in from the face of the building and accented by lintels and sills. In such Street Walls, new masonry window openings should not be introduced where they did not previously exist. Replacement windows in such Street Walls should replicate the essential architectural characteristics of the ones being replaced, including the vertical orientation, dimensions, colors, and details of frame and sash elements.
- (d) Storefront Details. Details of storefronts in Street Walls facing Cambridge Street should be designed as integral parts of the building and not as unrelated objects attached to the building. Details of storefronts in such Street Walls should be compatible with those of other buildings on the north side of Cambridge Street in order to reinforce the rhythm of storefronts along the street. Where original details of existing storefronts in such Street Walls have been covered, damaged, or removed, efforts to restore them or otherwise to restore such storefronts to their original character should be encouraged where practicable. New storefronts in such Street Walls should include display windows and recessed entries. Flush-mounted signs and simple fabric awnings generally are appropriate for such storefronts.
- (e) Building Entrances. In buildings having a Street Wall facing Cambridge Street, the principal building entrance should be oriented toward Cambridge Street so that pedestrian activity is focused along the street.
- (f) Rooftop Mechanical Equipment. Rooftop mechanical units should be located so as to minimize impacts upon neighboring buildings and on Cambridge Street. Such units should either be acoustically and visually screened so as not to be visible or audible from a public way within the Cambridge Street North District, or be concealed within shallow-hipped or gable-shaped roofs compatible with the rest of the Proposed Project and its neighboring buildings. Those portions of rooftop mechanical units that are visible from a public way within the Cambridge Street North District should be constructed using traditional materials compatible with the rest of the Proposed Project

and its neighboring buildings, such as slate shingles and copper gutters.

- (g) Streetscape and Landscape. Streetscape elements should lend human scale, texture, and interest to the area. These elements may include front lawns at historic buildings, wrought-iron fences on masonry bases, street trees, brick sidewalks, and acorn-style street lights.
- (h) Views and Vistas. New development, rehabilitation, and streetscape improvements should enhance views of the Boston skyline, the Charles River and Esplanade, and prominent buildings such as the Old West Church, the Bulfinch Building at Massachusetts General Hospital, the Charles Street Jail, Boston City Hall, the Custom House, and the State House.
- (i) Block Pattern. To help define the visual image of Cambridge Street, the elements of Proposed Projects in the Cambridge Street North Side Protection Area should relate in scale to the buildings on the south side of Cambridge Street. Accordingly, Proposed Projects should provide for appropriate breaks in Street Walls and building mass, and, where practicable, the creation of new streets or pedestrianways that continue the alignment of Beacon Hill streets and give access from Beacon Hill to areas north of Cambridge Street.
- (j) Building Materials. Primary building materials for Street Walls facing Cambridge Street should be masonry, including brick, limestone, sandstone, and granite. When used for such Street Walls, materials such as architectural precast concrete should be empathetic in surface texture and color with the exterior building materials used on the south side of Cambridge Street.

(↑ As amended on May 9, 1996 and July 31, 1997.)

↑SECTION 47A-11. **Specific Design Requirements.** Except as otherwise expressly provided in this Article or Code, all Proposed Projects within the Cambridge Street North District shall comply with the applicable design requirements established in this Section. The provisions of Article 6A shall be applicable to the provisions of this Section.

1. Street Wall Continuity. In any Proposed Project for the erection of a new structure, or for the extension of a structure, where such extension changes the location of a Street Wall facing a public street, each Street Wall newly constructed or relocated shall comply with the following dimensional requirements.

- (a) Projects Subject to Large Project Review. If the Proposed Project is subject to or elects to comply with Large Project Review, appropriate locations for such Street Walls shall be determined through Large Project Review.
 - (b) Projects Not Subject to Large Project Review. If the Proposed Project is not subject to Large Project Review, pursuant to Article 80 or by election, each such Street Wall shall be built to be coextensive with the building line, as defined in Clause (7A) of Section 2-1. Notwithstanding the foregoing, small variations in the Street Wall plane, such as bays and recesses, are allowed where appropriate.
- 2. Street Wall Height. The height of the Street Wall of a Proposed Project shall not exceed sixty-five (65) feet.
 - 3. Setback Requirements. Every portion of a Proposed Project (including, but not limited to, mechanical equipment) that extends above the Street Wall height shall be set back by not less than sixty-five (65) feet from the Street Wall.

(↑As amended on May 9, 1996.)

↓SECTION 47A-12. **Use Regulations.** In the Cambridge Street North District, the use of land and structures is hereby regulated as provided in this Section 47A-12. The provisions of Article 8, except Section 8-6, apply only as specified in this Section 47A-12. No land or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this Section 47A-12.

- 1. Ground Level Uses. Within any portion of a Proposed Project that has street frontage on Cambridge Street located on the ground level or entered by a ramp or stairs from a sidewalk entry, allowed uses are limited to Ground Level Uses, as listed in Appendix A to this Article. In such portions of Proposed Projects, all other uses that are allowed by this Section 47A-12 are conditional uses.
- 2. Inclusion of Day Care Facilities. The provisions of this Section 47A-12.2 apply only to Proposed Projects which exceed a building height of sixty-five (65) feet, or an FAR of four (4), or both. Any Proposed Project having a gross floor area (not including the floor area devoted to Residential Uses, Cultural Uses or Community Uses as these uses are described in Sections 47A-12.3 and 47A-12.4) that equals or exceeds one hundred fifty thousand (150,000) square feet shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table B of this Article. For the purposes of this Section 47A-12.2 and Table B only,

floor area devoted exclusively to restaurant, hotel, local retail, or general retail uses and uses accessory thereto shall be multiplied by 0.2 before being used in the calculation of required day care facilities. An Applicant for a Proposed Project subject to the provisions of this Section 47A-12.2 may fulfill its obligations by (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project, within the Cambridge Street North District, or within any portion of a Land Assembly and Redevelopment Plan Area or Planned Development Area if at least a portion of such Land Assembly and Redevelopment Plan Area or Planned Development Area is located within the Cambridge Street North District. Any Proposed Project subject to the provisions of this Section 47A-12.2 shall devote to on-site day care facilities an amount of floor area equal to at least four thousand (4,000) square feet, or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this Section 47A-12.2 shall be in conformity with any written regulations adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this Section 47A-12.2, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours.

TABLE B

Provision of Day Care Facilities

<u>Size of Proposed Project (Gross Square Feet)</u>	<u>Minimum Day Care Facilities (Gross Square Feet)</u>
150,000 up to 200,000	2% of gross floor area
200,000 up to 500,000	4,000
500,000 up to 1,000,000	8,000
more than 1,000,000	12,000

3. Allowed Uses. No land or structure in the Cambridge Street North District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use not specified (a) in this Section 47A-12.3, (b) in an approved Development Plan for land and structures in a PDA, or (c) in Section 47A-12.4 subject to the provisions of Article 6. Any use specified in this Section 47A-12.3 shall be allowed as a matter of right, subject only to the provisions of this Section 47A-12 or, in the case of a PDA, the approved Development Plan; provided that all uses specified in this Section 47A-12.3 are conditional when accessory or ancillary to an institutional use that is subject to the provisions of Section 47A-12.4.

- (a) Residential Uses. Limited to multifamily dwelling; row house; artists' live/work space; apartment house; group residence, limited; lodging house; boarding house. Residential uses include any affordable dwelling units, including but not limited to rental units, condominiums, and limited equity share cooperatives.
- (b) Entertainment and Cultural Uses. Limited to art gallery; museum; cultural or historical exhibition; music rehearsal studio; artist's studio or work space.
- (c) Restaurant Uses. Limited to lunchroom, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, provided that such use is conditional if alcoholic beverages are served; and provided that uses described in Use Item No. 38A of Section 8-7 are forbidden.
- (d) Office Uses. Limited to business or professional office; offices of community service organizations, medical or dental office; real estate, insurance, or other agency or government office; office building, post office; bank (including automatic teller machines but not including drive-in bank) or similar establishment.
- (e) Hotel Uses.
- (f) Educational Uses. Limited to nursery school, kindergarten, elementary school, or secondary school.
- (g) Community Uses. Limited to adult education center, community center, settlement house; day care center; family care center, community health center.
- (h) Recreational Uses. Limited to private grounds for games and sports; other social, recreational, or sports center whether or not conducted for profit; or private club operated for members only.
- (i) Public Service Uses. Limited to police station, fire station, public service pumping station, substation, or automatic telephone exchange, subject to St. 1956, c. 665, s. 2.
- (j) Service and Trade Uses. Limited to video or film production studio; barber shop; beauty shop; shoe repair shop; tailor shop; pick-up and delivery station of laundry or dry-cleaner; self-service laundry, hand laundry, or dry-cleaning shop, provided that in laundries and cleaning establishments only nonflammable solvents are used for cleaning; framer's studio; caterer's establishment; photographer's studio;

printing plant; taxidermist's shop; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; key and lock shop; express mail operation; ticket outlet; animal hospital or clinic; or other similar service or trade use.

- (k) Local Retail Uses. Limited to store primarily serving the local retail business or service needs of the neighborhood including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, drugs, tobacco products, clothing, dry goods, books, flowers, paint and other artists' supplies, hardware and other minor household appliances, furniture, and photographic equipment; provided that if the hours during which such establishment is open to the public begin before 6 A.M., or extend beyond 12 midnight, or if such merchandise is sold or displayed out of doors on the premises of such store, or if alcoholic beverages are sold, such uses are conditional; and provided that the uses described in Use Item No. 34A of Section 8-7 are forbidden.
- (l) General Retail Uses. Limited to department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage; provided that if the hours during which such establishment is open to the public begin before 6 A.M. or extend beyond 12 midnight, or if such merchandise is sold or displayed out of doors on the premises of such store, or if alcoholic beverages are sold, such uses are conditional; and provided that the uses described in Use Item No. 34A of Section 8-7 are forbidden.
- (m) Ground Level Uses. Uses specified in Appendix A hereto.
- (n) Institutional Uses. Limited to place of worship, monastery, convent, or parish house; library; elder care facility, orphanage or similar institution not for correctional purposes and not providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons.
- (o) Accessory Uses. Subject to the limitations and restrictions of Article 10, limited to: (i) a garage or parking space for occupants, employees, students, and visitors, provided that such use is accessory to a residential or hotel use allowed pursuant to Section 47A-12.3; (ii) accessory swimming pool, health club, tennis court; (iii) sale over the counter, wholly incidental to a restaurant or hotel use listed under Section 47A-12.3, of food or drink prepared on premises for off-premises consumption; (iv) the storage of flammable liquids and gases incidental to a lawful use; (v) the manufacture,

assembly, or packaging of products sold on the same lot as the main use; (vi) the maintenance and operation of not more than four amusement game machines in a private club, dormitory, fraternity, or sorority house, or similar noncommercial establishment, or in any commercial establishment; (vii) any use ancillary to, and ordinarily incident to, a lawful main use, provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is accessory.

4. Conditional Uses. No land or structure in the Cambridge Street North District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use subject to the provisions of Article 6 unless such use is specified in this Section 47A-12.4. The granting of a permit for any use so specified may be authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the provisions of this Section 47A-12, or may be allowed by the Zoning Commission in its approval of a Development Plan for a PDA. The continued right to a conditional use is dependent upon maintaining the character and extent of operations and structures.
- (a) Residential Uses. Limited to temporary dwelling structure; and any dwelling converted for more families, where such structure, after conversion, is nonconforming with respect to any applicable provision of this Article or Code, provided that, after conversion, any nonconformity as to floor area ratio is no greater than prior to conversion.
 - (b) Entertainment and Cultural Uses. Limited to concert hall; theater, commercial or nonprofit (including motion picture or video theater, but not drive-in theater, subject to the provisions of Section 47A-12.5); performance space.
 - (c) Restaurant Uses. Lunch room, restaurant, or cafeteria or other place for the service or sale of food or drink for on-premises consumption if alcoholic beverages are sold. Take-out restaurant: sale over the counter, not wholly incidental to a use specifically allowed under Section 47A-12.3, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.
 - (d) Recreational Uses. The maintenance and operation of more than four (4) amusement game machines in a private club, dormitory, fraternity or sorority home, or similar noncommercial establishment, or any commercial establishment.

- (e) Local Retail Uses. Those uses specified in Section 47A-12.3(k) if the hours during which such establishment is open to the public begin before 6 A.M. or extend beyond 12 midnight, or if such merchandise is sold or displayed out of doors on the premises of such store, or if alcoholic beverages are sold.
- (f) General Retail Uses. Those uses specified in Section 47A-12.3(l) if the hours during which such establishment is open to the public begin before 6 A.M. or extend beyond 12 midnight, or if such merchandise is sold or displayed out of doors on the premises of such store, or if alcoholic beverages are sold.
- (g) Institutional Uses. College or university granting degrees by authority of the Commonwealth; fraternity or sorority house or dormitory; trade, professional, or other school; hospital, sanatorium, library accessory to an institutional use not allowed pursuant to paragraph (n) of Section 47A-12.3; research laboratory accessory to an institutional use not allowed pursuant to paragraph (n) of Section 47A-12.3, provided that such laboratory use shall comply with all applicable guidelines and standards promulgated by the National Institutes of Health concerning the care and use of laboratory animals; penal or correctional institution; detention home; machine shop or other noisy activity accessory to a school, college, or university, provided that such use is adequately sound-insulated to protect the neighborhood from unnecessary noise; elder care facility, orphanage, or similar institution not for correctional purposes providing custodial care for drug addicts, alcoholics, or mentally ill or mentally deficient persons; clinic not accessory to a main use.
- (h) Parking Uses. Parking lot or parking garage.
- (i) Vehicular Uses. Repair garage, gasoline service station; car wash, provided that all washing, painting, lubricating, and making of repairs is carried on inside a building and that any auto body shop, car wash, repair shop, or paint shop is sufficiently sound-insulated to confine all noise to the lot and that all flashing, fumes, gases, smoke, and vapor are effectively confined to the lot; and further provided that there is no outside storage of damaged, disabled, or unregistered motor vehicles for a period of more than one month.
- (j) Service and Trade Uses. Funeral home; undertaker's establishment; or mortuary; check cashing business.
- (k) Changes of Use. Any change of use from a residential use to a non-residential use.

- (l) Accessory Uses. Subject to the limitations and restrictions of Article 10, limited to (i) a garage or parking space for occupants, employees, customers, students, and visitors, where such use is not accessory to a residential or hotel use allowed pursuant to Section 47A-12.3; (ii) car wash, valet service, or automobile repair service accessory to a parking garage and contained entirely within said parking garage; (iii) the keeping of laboratory animals, other than household pets, provided that every enclosure is sufficient to prevent a nuisance to any adjacent residences or eleemosynary institutions, that all resulting noise, dust, fumes, gases, odors, and refuse are effectively confined to the lot or so disposed of as not to be a nuisance or hazard to public health or safety, and that such use shall comply with all applicable guidelines and standards promulgated by the National Institutes of Health for the care and use of laboratory animals; (iv) clinical or professional offices accessory to a hospital or sanatorium whether or not on the same lot.
- (m) Ancillary Uses. Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and for which it would be a lawful accessory use if it were on the same lot; provided that any such use shall be subject to the same restrictions, conditions, limitations, provisos, and safeguards as the use to which it is ancillary.

- 5. Forbidden Uses. No land or structure in the Cambridge Street North District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use specified in Section 8-7 if such use is not specified in Section 47A-12.3 or 47A-12.4 as an allowed or conditional use, provided that nonconforming uses may be continued subject to the provisions of Article 9. Without limitation, uses described in Use Items No. 34A and No. 38A of Section 8-7 are forbidden.

(↑As amended on September 30, 1993, October 6, 1994, and September 20 and November 21, 1996.)

SECTION 47A-13. Off-Street Parking Not Required. Within the Cambridge Street North District, off-street parking facilities are not required in any Proposed Project. The provisions of Sections 23-8, 23-9, and 23-10 shall govern any Proposed Project for which off-street parking is provided.

↓**SECTION 47A-14. Off-Street Loading.** Off-street loading facilities must be located so as to be accessed from Fruit Street, Parkman Street, North Grove Street, North Anderson Street, or Blossom Street. The provision and design of off-street loading facilities for the use of any structure or land not subject to Large Project Review shall be subject to the provisions of Article 24. The provision and design of

off-street loading facilities for the use of any structure or land that is subject to Large Project Review, and any appropriate mitigation measures, shall be determined through Large Project Review.

(↑As amended on May 9, 1996.)

SECTION 47A-15. **Regulations.** The Boston Redevelopment Authority may promulgate and amend from time to time regulations to administer this Article.

SECTION 47A-16. **Severability.** The provisions of this Article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

SECTION 47A-17. **Definitions.** Words and phrases defined in Appendix B to this Article shall have the meanings set forth therein.

SECTION 47A-18. **Appendices.** The following appendices are incorporated herein:

Appendix A - Ground Level Uses

Appendix B - Definitions

Appendix C - Historic Buildings and Buildings that Contribute to the Architectural Significance of the District

APPENDIX A to ARTICLE 47A

Ground Level Uses

The following uses are Ground Level Uses and are allowed uses within the Cambridge Street North District, provided that uses described in Use Items No. 34A and No. 38A of Section 8-7 are forbidden. This list is intended to be illustrative of Ground Level Uses.

- Antique stores
- Appliances, repair shops
- Appliances, sales
- Artists' supply and music stores
- Athletic goods stores
- Automatic teller machines
- Bakeries or pastry shops
- Bank branch offices
- Barber shops
- Beauty parlors
- Bicycle stores, rental or repair
- Book stores or card stores
- Cafes
- Candy stores
- Carpet, rugs, linoleum, or other floor covering stores
- Churches
- Cigar stores
- Clock or watch stores or repair shops
- Clothing retail establishments
- Clothing stores (men's, women's, children's apparel)
- Coffee shops
- Coin stores
- Community centers
- Day care centers
- Delicatessen stores
- Department stores
- Diners
- Dressmaking shops, custom
- Drug stores
- Dry cleaning establishments or laundromats
- Dry goods or fabric stores
- Eating or drinking places, in accordance with the provisions of Sections 47A-12.3(c) and 47A-12.4(c).

APPENDIX A to ARTICLE 47A (continued)

Fabric or yarn stores
Fire stations
Fishing tackle or equipment stores, or rental establishments
Florist shops
Food stores, including supermarkets, produce and grocery stores, markets, health foods, delicatessens, prepared food/special food, spices and herbs, coffees, teas, meat, fish, poultry, and cheese stores, in accordance with the provisions of Sections 47A-12.3(k), 47A-12.3(l), 47A-12.4(e), and 47A-12.4(f).
Furniture stores
Furrier shops, custom
Gift shops
Hair products for headwear
Hardware stores
Historical exhibits
Hobby shops
Housewares
Household appliance repair shops
Ice cream stores
Interior decorating establishments
Jewelry shops
Kitchenware
Lamp shops
Leather goods or luggage stores
Libraries
Lobby space for offices or residences
Locksmith shops
Luggage stores
Millinery shops
Newsstands, enclosed
Office or business machine stores, sales or rental
Optician or optometrist establishments
Orthopedic stores
Paint stores
Parish houses
Parks, public or private
Party shops
Perfume shops
Pet shops
Pharmacies
Phonographic repair shops
Photographic developing or printing establishments

APPENDIX A to ARTICLE 47A (continued)

Photographic equipment stores
Photographic studios
Photographic supply stores
Photostating establishments
Picture framing stores
Police stations
Post offices
Printing establishments
Radio appliance shop, repair or sales
Record stores
Recreational centers (noncommercial)
Schools
Sewing machine stores, selling household machines
Shoe repair and shoeshine shops
Shoe stores
Sign painting shops
Sporting goods stores
Sports shop
Stamp stores
Stationery stores
Tailor shops, custom
Telegraph offices
Television repair shops
Tobacco stores
Tour operator
Toy stores
Typewriter stores
Typewriter or other small business machine repair stores
Variety or convenience stores
Video or motion picture store, sale or rentals
Wallpaper stores

APPENDIX B to ARTICLE 47A

Definitions

For the purposes of this Article only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this Article, as set forth in Section 47A-4, or the authorized agent of any such person or entity.
2. "Cambridge Street Plan" means the comprehensive plan, adopted with respect to the north side of Cambridge Street by the Boston Redevelopment Authority pursuant to Chapter 652 of the Acts of 1960, Section 3 of Chapter 4 of the Ordinances of 1952, and Section 27D-18 of the Code, which sets forth the planning policies, development controls, and design guidelines for the Cambridge Street North District.
3. "Cambridge Street North District" means the area depicted on Map 1K of this Code.
4. "Ground Level Uses" means the uses listed in Appendix A to this Article.
5. "Landmark" means any building or structure designated a landmark pursuant to Chapter 772 of the Acts of 1975, as amended.
6. "Proposed Project" means the demolition, erection, reconstruction, structural alteration, or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit. A Proposed Project may proceed in phases, and may include more than one building, structure, or use.
7. "Street Wall" means the exterior wall or portion of the exterior wall of a Proposed Project that faces a street on which such Proposed Project is located and that is below the Street Wall height determined pursuant to Section 47A-11.2.
8. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, zoning map or text change, or other relief granted by the Zoning Commission or the Board of Appeal.

APPENDIX C to ARTICLE 47A

**Historic Buildings and Buildings that
Contribute to the Architectural Significance of the District**

1. Historic Buildings and Buildings with Historic Portions

Those portions of the Charles Street Jail outlined in red in Exhibit D to
"Agreement for the Acquisition of a Site for a Facility to Replace Charles
Street Jail," dated February 10, 1986.

The Old West Church - 131 Cambridge Street

The Harrison Gray Otis House - 141 Cambridge Street

The Resident Physician's House at Massachusetts General Hospital -
279 Cambridge Street

2. Buildings that Contribute to the Architectural Significance of the District

265 Cambridge Street

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↑ARTICLE 49

CENTRAL ARTERY SPECIAL DISTRICT

(↑Article inserted on June 7, 1991*)

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*Date of public notice: May 9, 1991 (see St. 1956, c. 665, s. 5).

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Appendix A - Definitions

(**Editor's Note:** This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 49-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish special zoning regulations implementing the comprehensive plan required by the provisions of the Downtown Interim Planning Overlay District, Article 27D of this code. The goals and objectives of this Article and the Central Artery Special District Plan are to direct downtown development in a way that promotes balanced growth for Boston; to improve environmental quality by directing growth to underutilized areas of the City and avoiding an oversupply of commercial space in the downtown; to protect the residential neighborhoods from encroachment by downtown development; to create affordable housing opportunities for the North End; to create public open space and park resources for the downtown and North End, with links to the waterfront; to promote residential and mixed-use commercial activities compatible with adjacent areas; to promote uses which integrate uses, activities, and physical connections between the North End, downtown, and the waterfront; to provide new and expanded facilities for cultural and community services; to ensure a high quality of design of the open space, cultural, residential, and commercial uses in the Central Artery Special District; to establish design guidelines and standards to be applied by the Boston Redevelopment Authority in reviewing and approving of uses in the Central Artery Special District; to ensure that new development in the Central Artery Special District is compatible with and enhance the unique historic character of each of the surrounding districts and the unique historic sites that contribute to each district; and to create a new surface street and pedestrian network that is compatible with the existing character and conditions within each of the adjacent districts and improves the existing street and pedestrian environment.

SECTION 49-2. Recognition of the Central Artery Special District Plan. In accordance with Section 27D-18 of this code, which requires production of comprehensive planning policies, development controls, and design guidelines for the Downtown Interim Planning Overlay District, the Zoning Commission hereby recognizes the document entitled Boston 2000/A Plan for the Central Artery, herein referred to as the "Central Artery Special District Plan," as the general plan for the Central Artery Special District. The Central Artery Special District Plan also serves as the portion of the general plan for the City of Boston applicable to the Central Artery Special District. This Article is an integral part of and one of the means of implementing the Central Artery Special District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 49-3. Physical Boundaries. The provisions of this Article are applicable only in the Central Artery Special District. The boundaries of the Central Artery Special District are as shown on "Map 1Xa" and "Map 1Xb," both entitled "Central Artery Special District (Supplemental to 'Map 1, Boston Proper')," of the series of maps entitled "Zoning Districts City of Boston," as amended. Within the Central Artery Special District, there are parcels of land numbered sequentially 1

through 23N and also including Parcels 1A, 2A, and 11A. Parcel 7 is subdivided into two parcels designated "7W" and "7E"; Parcel 17 is subdivided into two parcels designated "17N" and "17S"; Parcel 18 is subdivided into parcels designated "18N" and "18S"; and Parcel 22 is subdivided into parcels designated "22N" and "22S". It is intended that the parcels identified only by a number correspond to parcels as identified and numbered in the Final Supplemental Environmental Impact Report/Statement (FSEIR/S) regarding the Central Artery (I-93)/Tunnel (I-90) Project, dated November 1990, submitted by the Massachusetts Department of Public Works ("MDPW"). Parcels identified with the suffix "A" are adjacent to parcels in the Central Artery right-of-way as identified by the MDPW and are being planned in coordination with parcels in the right-of-way. The suffix "N", "S", "E", or "W" designates the northerly, southerly, easterly, or westerly portion, respectively, of the parcel identified by the same number without suffix in the FSEIR/S.

Parcel boundaries represent a future condition as proposed as of the effective date of this Article. The precise parcel boundaries will depend on the final alignment of surface roads and ramp structures. Therefore, it is intended that Maps 1Xa and 1Xb be interpreted to accord with the actual alignment of roads and ramps as constructed within the Central Artery Special District. If said alignment differs so substantially from that depicted on Map 1Xa or 1Xb that the numbering scheme set forth in this Article cannot be applied, or if the area of any parcel as constructed differs substantially from that depicted on Map 1Xa or 1Xb, then an amendment to said map or to this Article, or both, may be required.

↓SECTION 49-4. **Applicability.** This Article, together with the rest of this Code, constitutes the zoning regulation for the Central Artery Special District and applies as specified in Section 4-1 regarding the conformity of buildings and land to this Code. Zoning relief in the form of exceptions from the provisions of this Article pursuant to Article 6A is not available except to the extent expressly provided in this Article or Article 6A. Application of the provisions of Article 27D to the Central Artery Special District is rescinded, and the provisions of the Central Artery Study Area of the Downtown Interim Planning Overlay District are extinguished, as of the effective date of this Article. Where conflicts exist between the provisions of this article and the remainder of the Code, the provisions of this Article shall govern. Except where specifically indicated in this Article, the provisions of this Article supersede Section 8-7 and Articles 11 and 13 through 24 of this Code for the Central Artery Special District.

Notwithstanding the provisions of the foregoing paragraph, the substantive provisions of this Article are premised on the construction of the Central Artery Project generally as described in the FSEIR. Until the substantial commencement of work in connection with such project (excluding test borings or geotechnical or environmental evaluations, but including excavation or utility work) on a given parcel of the Central

Artery Special District, such parcel shall be governed by the zoning regulations in effect for such parcel as of January 1, 1991.

(↑As amended on March 19, 1992.)

↑SECTION 49-5. **Relationship to Other Districts.** Parcels within the Central Artery Special District shall also be deemed part of adjacent zoning districts for all purposes under this Code, as follows:

1. Bulfinch Triangle District (Article 46): Parcels 1, 1A, 2, 2A, 3.
2. North End Neighborhood District (Article 54): Parcels 4, 5, 6, 8, 10, 11, 11A, 12.
3. Government Center/Markets District (Article 45): Parcels 7W, 7E, 9, 13, 14, 15, 16, 17N, 17S.
4. Financial District (prospective): Parcels 18N, 18S, 19, 21, 22N, and 22S.
5. South Station Economic Development Area (Article 40): Parcel 23N.
6. Fort Point Channel District (prospective): Parcel 20. On Parcel 20: (a) the provisions of Article 27D, Downtown Interim Planning Overlay District shall not apply to any Proposed Project, notwithstanding any contrary provision of said Article 27D; and (b) any Proposed Project for which a license is required pursuant to M.G.L. Chapter 91 and its implementing regulations shall be subject to the Tidelands Regulations of the Harborpark District - North End/Downtown Waterfront, as set forth in Section 42A-5, other than the provisions of subsection 7 of said Section 42A-5 (Provision for Cultural Uses in the Downtown Waterfront Subdistrict).

Parcels identified by the MDPW as numbers 23 (southern portion), 24, 25, 26, 26A are within the Chinatown District, subject to the provisions of Article 43. These parcels are included in the Chinatown Gateway Special Study Area and two Recreation Open Space (OS-RC) Subdistricts.

(↑As amended on May 17, 1993 and January 26, 1996.)

SECTION 49-6. Use and Dimensional Regulations Applicable in the Central Artery Special District.

1. Within the Central Artery Special District, uses are allowed, conditional, or forbidden on each parcel as set forth in Sections 49-9 through 49-13. No

land or Structure in said parcels shall be erected, used, or arranged or designed to be used, in whole or in part, unless, for the proposed location of such use, the use is identified in the applicable Section as "allowed" or, subject to the provisions of Article 6, "conditional." Any use not identified as allowed or conditional for a particular parcel is forbidden on that parcel.

[Ed. note: Certain text amendments forbidding particular uses are applicable in the Central Artery Special District. See Text Amendment Nos. 202 (container redemption centers), 212 (check cashing business), 238 (airport-related remote parking facility).]

2. Within the Central Artery Special District, accessory uses allowed or conditional under Sections 49-9 through 49-13 are not subject to the provisions of Article 10.
3. Within the Central Artery Special District, maximum allowed building height, floor area ratio (FAR), Lot Coverage, and other dimensional controls are applicable to each parcel as set forth in Sections 49-9 through 49-13. Except for building height, Lot Coverage, and FAR, dimensional controls are subject to the provisions of Article 6A.

↑SECTION 49-7. **The Application of Design Guidelines Within the Central Artery Special District.** All Proposed Projects within the Central Artery Special District shall be subject to Small Project Review, pursuant to paragraph (a)(i) (Design Review Required by Applicable Zoning) of Section 80E-2.1 (Applicability of Small Project Review: Design Component), except the following Proposed Projects:

- a. Any Proposed Project limited to a change of use which does not involve material erection, demolition, or alteration of any building or structure and which will not alter or affect more than one thousand (1,000) square feet of site area nor more than two hundred (200) square feet of exterior facade area of any existing building.

To be consistent with the design guidelines established in this Article, a Proposed Project shall be generally consistent with the design guidelines set forth with respect to individual parcels in Sections 49-9 through 49-13 and with respect to the Central Artery Special District generally in Section 49-8.

(↑As amended on May 9, 1996.)

↑SECTION 49-8. **Design Guidelines Applicable Generally in the Central Artery Special District.** In order to ensure that the restoration of the surface parcels, Boulevards, and Cross Streets of the Central Artery Special District are of a high-

quality design that benefits the City of Boston, the following design guidelines are applicable generally to all Proposed Projects in the Central Artery Special District.

1. Interim Restoration Design Guidelines Applicable Generally in the Central Artery Special District. In order to protect the safety and health of the public, enhance the visual character of the District and adjacent uses, and protect the physical integrity of adjacent parcels and uses during the reconstruction period of the surface Boulevards, Cross Streets, and reuse parcels, the following guidelines are applicable after the completion of work in connection with the Central Artery depressed roadway construction project in a given parcel and prior to the commencement of work on the permanent surface use of said parcel.
 - a. To the extent practicable, such parcels should be landscaped and maintained to permit safe, convenient public access.
 - b. Use of such parcels for parking, for storage of equipment or materials (other than for the Central Artery Project), or for high-intensity uses such as pushcart vending is strongly discouraged.
 - c. During any such interim period, parcels should be graded in conformity with adjacent grades and should be engineered and landscaped so as to prevent the accumulation of water, avoid damage to neighboring foundations of buildings and/or the tunnel structure and its appurtenant structures, and protect public safety and welfare.
2. Consistency With the Central Artery Special District Plan. Any Proposed Project within the Central Artery Special District shall be reviewed, pursuant to Large Project Review or Small Project Review, for consistency with the conceptual design and programming objectives and specific recommendations set forth in the Central Artery Special District Plan, and for consistency with the overall objectives set forth in the Plan for the provision of public open space within the District.
3. Design Particularity and Continuity. The primary design organization for the overall District should recognize that each of the five adjacent districts (Bulfinch Triangle District, North End Neighborhood District, Government Center/Markets District, Financial District, and South Station Economic Development Area) of the Central Artery Special District has a distinct character that should be reflected in parcel design and Cross Street design. At the same time, it should recognize that the districts are connected by the north/south Boulevards and sidewalks which define the

edges of the overall Central Artery project and that the design should provide for continuity among the districts and transitions from one district to the next.

4. Quality Standards for Parks, Open Space, Sidewalks, and Streets. The quality of design and construction for open areas within the Central Artery Special District, including landscaping, paving materials, street furniture, light standards, amusements, and decorative elements, should be consistent with that of the major public and private downtown open spaces of Boston including Christopher Columbus Park, Post Office Square, Copley Square, the public spaces of Faneuil Hall/Quincy Markets and Rowe's Wharf, and the streetscapes of successful pedestrian streets such as Washington Street at Downtown Crossing and Charles Street.
5. Establishing the Boulevards. The design and construction of each Proposed Project should develop and reinforce the character of the northbound and southbound surface Boulevards as tree-lined streets connecting the parcels and subdistricts of the Central Artery and providing a sense of continuity for the District as a whole. These Boulevards will provide new, stronger links to existing and proposed downtown developments. In addition, the Boulevards will reconnect the downtown neighborhoods of Chinatown and the Old West End to the Waterfront and will also create new north/south pedestrian connections between those neighborhoods which do not exist presently.

Trees, evenly spaced approximately twenty-five (25) feet on-center in either single or double rows, sidewalk paving, street furniture, and lighting along the Boulevards should provide the primary organizational design elements for the Boulevards and should be reinforced through the infilling and rehabilitation of buildings along the corridor. Trees should be selected from a variety of tree forms and types suitable for streetscape plantings. Trees should be at least four-inch (4") caliper upon initial planting. Wherever technically feasible, Boulevards and their Cross Streets between Causeway Street and Kneeland Street should be planted on both sides with at least a single row of street trees along each of the sidewalks, unless otherwise specified in the Central Artery Special District Plan or in design review. Each sidewalk and its street crossing of the Boulevards or Cross Streets should be delineated by special paving materials such as granite or brick pavers, and the crossing should continue the width of the sidewalk which it is extending or connecting.

6. District Open Space Form. Parcels 13 through 17S and Parcels 18N through 22S form two long north/south axes that should be designed to

enhance the linear organization down the center of the parcels. The central axis may be a view corridor, a pedestrian or activity area, architectural elements or circulation path within a building, or an overall design concept which visually connects the parcels of the gateway plaza at Dewey Square to Rowe's Wharf/High Street and visually connects Rowe's Wharf/High Street to Christopher Columbus Park/Faneuil Hall. For the neighborhood Parcels 8 and 10 in the North End and Parcel 23S at South Station, an equal effort should be developed to reinforce the diagonal crossing of the parcel as well as the Cross Streets of Hanover Street, North Street, Sudbury Street, Atlantic Avenue, and Beach Street. The internal paths within the North End and South Station parcels may be more flexible than in the Downtown Waterfront and Financial District parks and should, in fact, reinforce the diagonal pedestrian cross-parcel movement.

7. Design Guidelines for Cross Streets. As an integral element of the overall Central Artery Plan, the Cross Streets will serve to reconnect Boston's historic streets to Boston Harbor. The Plan provides for the reconnection of seven historic streets across the Central Artery toward the waterfront. These streets include Traverse Street, Hanover Street, North Street, Atlantic Avenue, Broad Street, Oliver Street and Pearl Street. All these streets except North Street extend the downtown pedestrian and vehicular network across the Artery. North Street provides for only a direct pedestrian connection. Wherever technically feasible, the layout and design of the intersections between the Boulevards and the Cross Streets should be typical right-angle intersections with a pedestrian phase signal and cross walks for each of the four directions except where exit or entry ramps prohibit such a pedestrian crossing. The entire section of Hanover Street, State Street, High Street, and each of the Cross Streets within the waterfront area between State Street and High Street should also be paved with special feature pavement in order to reduce the visual separation between the parcels. The raising of the street grades for Milk Street and India Row should be considered in order to further enhance the connection between the waterfront parcels.
8. Design Guidelines for New Infill Buildings and Boulevard Public Buildings. Any new buildings on Parcels 1, 1A, 2, 2A, 5, 7, 9, 11, and 11A and rooftop additions on Parcel 20, as well as facade renovations, should be designed so that the exterior proportions, scale, massing, window treatment, materials, colors, and architectural detailing are compatible with the observable architectural character of the existing structures in the adjacent neighborhood. Any new public buildings on Parcels 6, 12, 17N, 19, and 21 should be designed so that their exterior proportions, scale, massing, window, treatment, materials, colors, and detailing establish a

unique building design vocabulary that sets these public buildings apart from their surrounding district buildings. These buildings should establish a visual presence along the corridor both day and night through the use and incorporation of lights and transparent glazing.

9. Sidewalk Dimensions for the Boulevards and Cross Streets. Except as otherwise expressly provided in design guidelines for individual parcels, sidewalk width for the Boulevards, the parcels which parallel the Boulevards, the Cross Streets, and the pedestrian crossings shall follow generally the dimensional requirements outlined below.
 - a. The width of the outer Boulevard sidewalks (east side of the northbound Boulevard, west side of the southbound Boulevard) may vary from parcel to parcel because of the existing buildings which face the corridor. However, the minimum dimension generally should not be less than twelve (12) feet unless restricted by existing buildings, and the maximum dimension should not exceed twenty-five (25) feet except as follows:
 - (i) along the northbound Boulevard between Hanover Street and Endicott Street, width should not exceed thirty-five (35) feet.
 - (ii) The sidewalk width should be at least twenty-five (25) feet in front of Marketplace Center, the Long Wharf Marriott Hotel, Rowe's and Foster's Wharfs, and the Federal Reserve Bank building.
 - (iii) A plaza space of approximately forty-five (45) feet in sidewalk width should be developed in front of the Government Center Garage for the entire length of that block.
 - b. The width of the inner Boulevard sidewalks (west side of the northbound Boulevard, east side of the southbound Boulevard) should not be less than seven and one-half (7-1/2) feet nor more than twelve (12) feet, except as follows:
 - (i) On Parcels 19, 21, 22N, and 22S the sidewalk width should not exceed twenty (20) feet.
 - c. The sidewalks along the Cross Streets should not exceed fifteen (15) feet in width along the entire Central Artery corridor except as follows:

- (i) On State Street and the southern sidewalk of Pearl Street, the sidewalk width should not exceed thirty (30) feet.
- d. The width of pedestrian-only crossings which extend adjacent streets or pedestrian pathways across the Central Artery corridor should not exceed thirty (30) feet. These crossings include the following:
 - (i) Salem Street extension
 - (ii) North Street extension, as the southerly portion of Parcel 10
 - (iii) Walk-to-the-Sea extension
 - (iv) Broad Street extension
 - (v) Dewey Square, as the extension of Federal Street

↓SECTION 49-9. **Regulations Applicable to the Bulfinch Triangle/Central Artery Area.** The purpose of zoning regulations applicable within the Bulfinch Triangle/Central Artery Area is to encourage appropriate residential and commercial development and to restore the traditional urban plan and scale of the Bulfinch Triangle/Central Artery Area. The significant housing development, ground floor retail, and service uses planned for this area will promote a vital residential and mixed-use neighborhood.

The design of any development in the Bulfinch Triangle/Central Artery Area should respond to the residential and service needs of the adjacent community. In addition, the design should consider the historic resources of the adjacent Bulfinch Triangle Area which merit protection and public interpretation. These resources are characterized by the historic brick and masonry structures of four to nine stories with cast iron storefronts; the Causeway/Canal Street area, which traditionally has been a transportation corridor with varying modes including water, train, trolley, and subway; and the historic street grid of the Bulfinch Triangle and pedestrian crossing connections at Traverse Street.

1. Parcel 1

- a. Use Regulations. Allowed uses on Parcel 1 are Transportation Uses, Local Retail/Service Uses, and Office Uses. Residential Uses and parking are conditional on Parcel 1.
- b. Dimensional Regulations. On Parcel 1, the maximum allowed FAR is eight (8) and the maximum allowed building height is one hundred

(100) feet. For any building facade greater than eighty (80) feet in height on Causeway Street, a setback of twenty-five (25) feet is required above the height of sixty-five (65) feet.

- c. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 1 subject to Section 49-7.

- (i) If the northbound access ramp to the Central Artery Tunnel below Parcel 1 ("WCN Ramp") is not constructed, vehicular access to Parcel 1 should be located along (new) Beverly Street. If a bus station is proposed, all vehicular entrances should be located to assure adequate bus queuing inside the station. The bus station exit should be located along New Haverhill Street to provide direct access to the northbound and southbound Boulevards. If a public parking garage is proposed, the entrance and exits should be located close to Traverse Street to provide adequate queuing space along Beverly Street. If, however, the WCN Ramp is constructed, all vehicular access to the site should be from New Haverhill Street.
- (ii) Retail shops, vending kiosks, and newspaper stands should be incorporated within the ground floor design of the bus station.
- (iii) A minimum sidewalk width of fifteen (15) feet along New Haverhill Street should be provided. However, fifty percent (50%) of such sidewalk could be incorporated into an arcade structure. For the remaining three sides of the parcel a minimum sidewalk width of ten (10) feet should be provided.

2. Parcel 1A

- a. Use Regulations. Allowed uses on Parcel 1A are Local Retail/Service Uses, Office Uses, and bus station and subway access. Residential Uses are conditional on Parcel 1A.
- b. Dimensional Regulations. On Parcel 1A, the maximum allowed FAR is eight (8) and the maximum allowed building height is one hundred (100) feet. For any building facade greater than eighty (80) feet on Causeway Street, a setback of twenty-five (25) feet is required above the height of sixty-five (65) feet. For any building facade greater than thirty-five (35) feet in height on Canal Street, a setback of thirty (30) feet is required above the height of thirty-five (35) feet.

- c. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 1A subject to design review pursuant to Section 49-7.
- (i) A pedestrian concourse surrounded by retail space should be the objective for the proposed building's ground floor design in order to respond to pedestrians entering and exiting from the underground MBTA station and the ground-level retail uses. Transparent facade treatment along the ground floor generally should be incorporated to provide visual connection between the public sidewalks and the MBTA interior concourse. Lobby and elevators should be accessible directly from the streets surrounding the block to maintain security and privacy for uses not on the ground level.
 - (ii) Any proposed building should preserve the existing sidewalk width along Canal Street. For the remaining three sides, a minimum width sidewalk of ten (10) feet should be established.
 - (iii) Any proposed use and development of this parcel should allow for the extension of Traverse Street along its existing alignment.

3. Parcel 2

- a. Use Regulations. Allowed uses on Parcel 2 are Office Uses and Local Retail/Service Uses. Residential Uses are conditional on Parcel 2.
- b. Dimensional Regulations. On Parcel 2, the maximum allowed FAR is eight (8), and the maximum allowed building height is one hundred (100) feet.
- c. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 2 subject to design review pursuant to Section 49-7.
 - (i) Any proposed building on Parcel 2 should limit its service access and/or drop-off on Traverse Street through a one-way loop system to reduce traffic impacts associated with the automobile circulation patterns.
 - (ii) Lobby entry and elevators should be accessed from Traverse Street in order to reinforce, and reduce impacts associated with,

the automobile circulation patterns along Traverse and Canal Streets.

- (iii) Any building on Parcel 2 should continue the street walls of North Washington Street and the extension of New Chardon Street, following the existing massing of the Bulfinch Triangle. A special architectural feature such as a tower form, bay window extension, or other building element in the facade should be incorporated into the design of the corner of North Washington Street and New Chardon Street because it will be highly visible from the tunnel off-ramp.

4. Parcel 2A

- a. Use Regulations. Allowed uses on Parcel 2A are Office Uses, Local Retail/Service Uses, and ancillary structures necessary for operation of the MBTA Green Line and the Central Artery, such as emergency exit facilities. Residential Uses are conditional on Parcel 2A.
- b. Dimensional Regulations. On Parcel 2A, the maximum allowed FAR is eight (8) and the maximum allowed building height is one hundred (100) feet. For any facade greater than thirty-five (35) feet in height on Canal Street, a setback of thirty (30) feet is required above the height of thirty-five (35) feet.
- c. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project in Parcel 2A subject to design review pursuant to Section 49-7.
 - (i) The ground floors should be able to accommodate both existing pedestrian-oriented retail uses along Canal Street and the existing MBTA service facility which is located within the parcel.
 - (ii) Any proposed building design for this parcel should preserve and incorporate the existing Historic Building on Canal Street and the existing MBTA service facility on the site.
 - (iii) Any new building within Parcel 2A should preserve the existing sidewalk width along Canal Street. In addition, the building should continue the existing street wall of New Chardon Street extension.

- (iv) Any development should allow for the extension of Traverse Street along its existing alignment.

5. Parcel 3

- a. Open Space Designation. Parcel 3 is hereby established as an Urban Plaza Open Space (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 3 are those uses allowed in Urban Plaza Open Space Subdistricts pursuant to Section 33-15.
- c. Dimensional Regulations. No buildings are allowed on Parcel 3.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 3 subject to design review pursuant to Section 49-7:
 - (i) The design of Parcel 3 should reinforce the streetscape plans developed for North Washington Street and the Bulfinch Triangle, as well as the pedestrian connections between the North End and the Bulfinch Triangle along the Traverse Street corridor.
 - (ii) This open space should be enclosed in a manner that is similar to other enclosed open spaces in the North End with plantings and with an ornamental fence with a maximum height of four (4) feet in order to preserve pedestrian visibility. Low walls and/or dense shrubs may be incorporated with the fence in order to separate the street from the plazas and to reduce the noise from vehicular traffic.

(↑ As amended on May 9, 1996.)

↑SECTION 49-10. **Regulations Applicable to the North End/Central Artery Area.** The purpose of zoning regulations applicable within the North End/Central Artery Area is to permit the construction of a significant amount of family, elderly, and affordable housing. The creation of parks, playgrounds, sports facilities, and passive recreational areas adjacent to the residential community of the North End shall be designed specifically for the benefit of the neighborhood's families and elderly population. The open space should provide a front yard for the community and a

buffer between Government Center and the residential area. Community facilities for neighborhood recreational use shall be established, including a community recreational building intended to serve as the center of community activity and meetings.

The design of any development in the North End/Central Artery Area should respond to the open space, residential, and service needs of the adjacent community. In addition, the design should consider the historic resources of the adjacent North End, Fulton-Commercial Street, Blackstone Block, and Faneuil Hall/Markets areas which merit protection and public interpretation. These areas are characterized by some of the earliest and most historically significant buildings in Boston. The North End retains the historic street pattern and street names of Boston's Colonial period and includes Boston's Freedom Trail.

1. Parcel 4

- a. Open Space Designation. Parcel 4 is hereby established as an Urban Plaza Open Space (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 4 are those uses allowed in Urban Plaza Open Space Subdistricts pursuant to Section 33-15.
- c. Dimensional Regulations. No buildings are allowed on Parcel 4.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 4 subject to design review pursuant to Section 49-7.
 - (i) The design of Parcel 4 should reinforce the streetscape plans developed for North Washington Street and the Bulfinch Triangle, as well as the pedestrian connections between the North End and the Bulfinch Triangle along the Traverse Street corridor.
 - (ii) The open space should be enclosed in a manner that is similar to other enclosed open spaces in the North End, with plantings and an ornamental fence with a maximum height of four (4) feet in order to preserve pedestrian visibility. Low walls and/or dense shrubs may be incorporated with the fence in order to separate the street from the plazas and to reduce the noise from vehicular traffic.

2. Parcel 5

- a. Open Space Designation. Parcel 5 is hereby established as an Urban Plaza Open Space (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 5 are those uses allowed in Urban Plaza Open Space Subdistricts pursuant to Section 33-15. Restaurant Use on Parcel 5 is conditional.
- c. Dimensional Regulations. On Parcel 5, for any Restaurant that is permitted, the maximum allowed FAR is two (2) and the maximum building height is thirty-five (35) feet.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 5 subject to design review pursuant to Section 49-7:
 - (i) This parcel should be designed for limited neighborhood recreational activities such as tot lots and seating areas.
 - (ii) The design of this parcel should reinforce the streetscape plans developed for North Washington Street as well as the pedestrian connections between the North End and the Bulfinch Triangle along the Traverse Street corridor.
 - (iii) The perimeter of the open space should be enclosed in a manner that is similar to other enclosed open spaces in the North End, with plantings and an ornamental fence with a maximum height of four (4) feet in order to preserve pedestrian visibility. Low walls and/or dense shrubs may be incorporated with the fence in order to separate the street from the plazas and to reduce the noise from vehicular traffic.

3. Parcel 6

- a. Open Space Designation. Parcel 6 is hereby established as a Recreation Open Space (OS-RC) Subdistrict, subject to the provisions of Article 33 applicable to OS-RC Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.

- b. Use Regulations. Allowed uses on Parcel 6 are those uses allowed in Recreation Open Space Subdistricts pursuant to Sections 33-10 and, in addition, Community Uses.
- c. Dimensional Regulations. For a Community Use on Parcel 6, the maximum allowed FAR is four (4), and the maximum allowed building height is fifty-five (55) feet above the top of the ramp structure. There is no Lot Coverage restriction for Parcel 6; Lot Coverage shall be determined through design review.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 6 subject to design review pursuant to Section 49-7.
 - (1) Any building proposed for Parcel 6 should include Community and Cultural Uses and recreational uses above the access ramps to the Central Artery Tunnel. An open space forecourt and/or paved recreational area which could include outdoor ball courts should be included in the parcel. The urban design of the public building should recognize the significance of Parcel 6 as a critical point of pedestrian connection and transition between the North End, Government Center, and the Bulfinch Triangle. Careful attention should be given to the orientation of the building to each of these neighborhoods.
 - (ii) The community facility for recreational and cultural activities proposed for Parcel 6 should be designed to mitigate the visual impact of the tunnel ramps on this parcel. If a building is not built, a series of terraces enclosed by fences and/or walls should be provided to accommodate active recreational uses such as basketball or volleyball courts.
 - (iii) The proposed community building's southern facade, facing Parcel 8, should help create a sense of enclosure for North End neighborhood parks (Parcels 8 and 10) and present a facade that conveys the civic character of an important neighborhood facility. The east and west facades located along the two boulevards and the north facade should be designed and organized in response to programmatic and infrastructure demands of the tunnel ramps and should be compatible with the architecture of the adjacent buildings. The design of the north facade should reflect its importance as the gateway portal into the subsurface artery tunnel.

- (iv) Primary pedestrian access to the community facility should be provided at ground level or at a raised plaza located in front of the southern facade. The building should provide an adequate space to serve as an exterior arrival plaza and vehicular drop-off along the southern facade. Additional access points through an above-grade pedestrian bridge which connects to adjacent Parcel 5 and the Government Center Garage area are encouraged and should be located on the northern facade.
- (v) An emergency sidewalk with a minimum width of two and one-half (2-1/2) feet should be constructed along the two Boulevard sides of the structure; a sidewalk approximately fifteen (15) feet wide should be incorporated into the plaza design at the southern end of the building. Because of the proposed ramps, no access is recommended at grade for the north elevation.
- (vi) The service access to Parcel 6 should be designed to be an integral element within the architecture of the building, and not impact the sidewalk or the proposed entry plaza.
- (vii) Views to the Custom House Tower from New Haverhill Street in the Bulfinch Triangle should be preserved.

4. Parcels 8 and 10

- a. Open Space Designation. Parcels 8 and 10 are hereby established as Open Space Subdistricts. Parcel 8 is subject to the provisions of Article 33 applicable to Recreation Open Space (OS-RC) Subdistricts. Parcel 10 is subject to the provisions of Article 33 applicable to Parkland Open Space (OS-P) Subdistricts. In addition, both Parcel 8 and Parcel 10 are subject to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 8 are those uses allowed in Recreation Open Space Subdistricts pursuant to Section 33-10. Allowed uses on Parcel 10 are those uses allowed in Parkland Subdistricts pursuant to Section 33-9. In addition, outdoor Community Uses and cafes are allowed on Parcels 8 and 10.
- c. Dimensional Regulations. On Parcels 8 and 10, the maximum allowed building height is thirty-five (35) feet. The maximum Lot Coverage for Parcel 8 is ten percent (10%). The maximum Lot

Coverage for Parcel 10 is five percent (5%). The maximum allowed footprint area for any individual building on Parcel 8 is twelve hundred (1,200) square feet. The maximum allowed footprint area for any individual building on Parcel 10 is six hundred (600) square feet.

- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcels 8 and 10 subject to design review pursuant to Section 49-7.
- (i) Parcels 8 and 10 should be programmed, designed, and detailed for the primary benefit of the adjacent North End community through the development of a series of spaces which invite both residents and visitors to use the park while clearly delineating a neighborhood presence and oversight of the park. The spaces should vary in scale, design, and character, to allow a diversity of activity areas such as safe spaces for small groups of children to play and a large plaza for the traditional neighborhood festivals. Each parcel may have an individual design and program. However, a common set of design elements should define the outside edges of both parcels and along Hanover Street in order to integrate the two parcels as one single neighborhood park.
 - (ii) Within Parcels 8 and 10 there should be a combination of active and passive recreational activities located to be compatible with and expand the use of any adjacent community facility on Parcel 6. Parcel 10 should contain a generous and open grassy area for informal or passive recreation, screened from the adjacent traffic. A variety of seating areas, small tot lot/play areas and game tables could be located around the outside edge of this primarily lawn open space parcel. The design should be programmed for more passive activities. Parcel 8 should consist of a variety of active play areas for children and adults (e.g., basketball courts, volleyball courts, activities for elders) and should be designed to withstand higher levels of activity. In addition, a large tot lot/play area should be included in a portion of this parcel.
 - (iii) The area on either side of Hanover Street in both Parcels 8 and 10 and the Hanover Street right-of-way should be designed as a paved plaza that establishes a formal gateway and festival plaza for the North End, while also extending Hanover Street to

reconnect the North End to the Blackstone block and the downtown.

- (iv) An architectural element such as a loggia, a series of pavilions, or an arcade could enclose and define the central space along Hanover Street. Steps or seating should be incorporated within the structure to accommodate the change of grade along Hanover Street. A series of flags or gateway festival banners can further define Hanover Street and plaza area.
- (v) A gate, removable bollards, or other closure device should be located within the parcel boundaries at both ends of Hanover Street where it intersects with the new boulevards in order to allow the closing of the street to vehicular through traffic during weekends or festival events.
- (vi) Each of Parcels 8 and 10 should be designed so that it can be secured in the evening, including gates at each path or sidewalk which enters the parcels, and a fence, wall, or other element enclosing the parcel. The enclosure element will ensure the safety of the parks and play areas within the parcels and will protect the lawn and planting areas in addition to the play areas. The enclosure element should be ornamental and complementary to the other architectural and landscaping elements of the park.
- (vii) Freestanding pavilions, cafes, or other structures, when specifically allowed pursuant to paragraph (b) of this Subsection 49-10.4, may be located within each of the two park areas in close proximity to the loggia structure at Hanover Street.
- (viii) No structure on Parcel 8 should obstruct the view corridor from Tremont Street to the Old North Church.
- (ix) Plant materials should be arranged to define the various activity areas and outside edges of the parcels, as well as to reinforce the view corridors. The street trees should be planted at the interior edges of the sidewalks and within the fence line as well as along the pedestrian cross-connections such as Salem Street.

- (x) Because of the differences in elevation between the two Boulevards, a series of retaining walls with heights allowing for seating may be located as necessary within the parcels. A slight raise in topography is possible in the central area of Parcel 10 to correspond to the subsurface tunnel box and adjacent roadway elevations.
- (xi) Along each of the northbound and southbound Boulevards, the sidewalk should have a minimum width of seven and one-half (7-1/2) feet. The extensions of North Street and Salem Street sidewalks through the parcels should be aligned along the center line of the view corridors between Faneuil Hall and the Tunnel Authority Building and the Salem Street corridor respectively and should have a minimum width of twenty (20) feet. The Sudbury Street sidewalk on the south side should be a minimum of seven and one-half (7-1/2) feet wide. The sidewalks on both sides of Hanover Street should be a minimum of twenty (20) feet in width and be an integral element of the central plaza associated with Hanover Street gateway plaza.
- (xii) Footpaths within the interior of the parcels should have a maximum width of seven and one-half (7-1/2) feet, except that where the path is adjacent to recreation areas or seating areas footpaths can exceed the 7-1/2-foot maximum width.

5. Parcels 11 and 11A

- a. Use Regulations. Allowed uses on Parcels 11 and 11A are Residential Uses and Local Retail/Service Uses.
- b. Dimensional Regulations. On Parcels 11 and 11A, the maximum allowed FAR is four (4), and the maximum allowed building height is fifty-five (55) feet. Any building on Parcel 11 or Parcel 11A is subject to the provisions of Section 54-18 (North End Neighborhood District - Roof Structure and Building Height Restrictions).
- c. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 11 or Parcel 11A subject to design review pursuant to Section 49-7.
 - (i) Infill residential buildings on these parcels in the North End should be located at the back edge of the sidewalks and plazas to form an enclosure to the park on Parcels 8 and 10 and to

reinforce visually the existing Street Wall of the North End. Where possible, the facades generally should align with the facades of existing adjacent buildings and with buildings on adjacent streets.

- (ii) Ground-level Local Retail/Service Uses should occupy those areas of any building which abut City sidewalks and streets.
- (iii) Average sidewalk width along the existing Cross Street and its Boulevard extension between North Street and New Chardon Street should not exceed twenty-five (25) feet.
- (iv) Any proposed building design for Parcel 11A should incorporate into its design the emergency access ramp which will be located along North Street.
- (v) No structure on Parcel 11 should obstruct the view corridor from Tremont Street to Old North Church.

6. Parcel 12

- a. Use Regulations. Allowed uses on Parcel 12 are Residential Uses, Community Uses, Cultural Uses, and Local Retail/Service Uses. Allowed uses should accommodate a bus and trolley drop-off and ticketing facility.
- b. Dimensional Regulations. On Parcel 12, the maximum allowed FAR is four (4) and the maximum allowed building height is fifty-five (55) feet. Any building on Parcel 12 is subject to the provisions of Section 54-18 (North End Neighborhood District - Roof Structure and Building Height Restrictions).
- c. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 12 subject to design review pursuant to Section 49-7.
 - (i) Any proposed building for Parcel 12 should allow for a bus and trolley drop-off and ticketing facility as a ground-level use. Other ground-level uses could include Local Retail/Service, Cultural, and Community Uses. Above this facility, an optional mixed-use development of Office, Retail and/or Residential, or Cultural and Community Uses could be provided.

- (ii) The design and massing of any building on Parcel 12 should be programmed to accommodate and complement the activities of the adjacent North End and Quincy Markets areas and designed to be compatible with the physical character of the adjacent areas.
- (iii) The proposed massing and facade of the buildings should reinforce the spatial enclosure of the North End neighborhood parks. The southern facade facing the waterfront area should appear to extend the Atlantic Avenue streetwall and further enclose the Waterfront Park. The facades which face the Boulevards should respond to the programmatic and functional requirements of the Boulevards and the ramps and below-grade infrastructure demands, as well as be compatible with the architectural character of the adjacent buildings.
- (iv) Primary access to any building should be provided at ground level at both the northern and southern ends of the parcel. An above-ground passageway from the Quincy Markets area and into a small structure in Parcel 10 may be considered if it is appropriate for accommodating high pedestrian flows and relieving potential conflicts with ground-level bus operators. In addition, the view corridors down Commercial Street should be preserved or, if that is impractical, reflected in the massing and/or elevation of the building and not as an actual ground-level opening. The view corridor down Clinton Street to Christopher Columbus Park should be preserved.
- (v) Service access to Parcel 12 should occur at grade from the southbound Boulevard. The access should be designed to mitigate its impact on the street and the pedestrian environment.
- (vi) A maximum sidewalk dimension of fifteen (15) feet should be observed along the north, south, and west sides of the parcel. Along the eastern side where constraints exist, a minimum sidewalk dimension of two and a half (2-1/2) feet should be observed.

(↑ As amended on May 17, 1993 and May 9, 1996.)

↑SECTION 49-11. **Regulations Applicable to the Government Center/Central Artery Area.** The purpose of zoning regulations applicable within the Government Center/Central Artery Area is to promote additional open space and parkland in the

downtown, increase cultural and recreational uses for the benefit of residents and visitors in the downtown area, enhance the pedestrian environment of the downtown and waterfront areas, and improve the pedestrian connections to the waterfront and expand opportunities for waterfront-related recreational activities. A winter skating rink and urban gardens and other features such as a sculpture garden, pushcart retail area, and cultural exhibits should provide an opportunity for lively pedestrian activity in the Government Center/Central Artery Area.

The design of any development in the Government Center/Central Artery Area should respond to the open space, residential, and service needs of the adjacent community. In addition, the design should consider the historic resources of the adjacent Government Center/Markets and waterfront area which merit protection and public interpretations. This area is significant as the central commercial space of Boston dating to its earliest period, as well as for its nineteenth-century granite style and early twentieth-century Beaux Arts architecture. Long Wharf of 1710 is a major historic element, with its nineteenth-century Custom House Block and Chart House and historic vista to the Old State House. The Broad Street area has historic significance for its 1805 commercial district plan by Bulfinch and the views down Broad Street toward Rowe's Wharf.

1. Parcel 7W

- a. Use Regulations. Allowed uses on Parcel 7 are parking, Office Uses, Local Retail/Service Uses, and Seasonal and Festival Uses. Uses within Parcel 7 should accommodate subway access and a ventilation structure for the depressed Central Artery.
- b. Dimensional Regulations. On Parcel 7W, the maximum allowed FAR is seven (7), and the maximum allowed building height is eighty (80) feet.
- c. Design Guidelines. The design guidelines for a building on Parcel 7W are incorporated in the Land Disposition Agreement by and between the Boston Redevelopment Authority and the Commonwealth of Massachusetts acting by and through the Department of Public Works, dated December 22, 1988, under the title of Exhibit E, Design Guidelines and Standards. No structure on Parcel 7 should obstruct the view from Tremont Street to Old North Church.

2. Parcel 7E

- a. Open Space Designation. Parcel 7E is hereby established as an Urban Plaza Open Space (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 7E are those uses allowed in Urban Plaza Open Space Subdistricts pursuant to Section 33-15, and in addition, Seasonal and Festival Uses. Cultural Uses and/or Local Retail Service Uses on Parcel 7E are conditional.
- c. Dimensional Regulations. On Parcel 7E the maximum allowed building height is thirty-five (35) feet. Maximum Lot Coverage for Parcel 7E is fifteen percent (15%).
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 7E subject to design review pursuant to Section 49-7.
 - (i) The plaza area should be designed to accommodate push-cart vendor activities such as those found on Blackstone Street.
 - (ii) The plaza area should be primarily open space with trees planted along the sidewalk edge to enclose the space. The paving design pattern could outline the dimensions of the future pushcart vending areas.
 - (iii) The view corridor from Blackstone Street should be extended through Parcel 7E. The Salem Street view corridor should be terminated on Parcel 7E by an architectural element. The architectural element should be located within the parcel inside the sidewalk edges of Hanover Street and the new southbound Boulevard.
 - (iv) An open framed structure or a series of vertical supports with lights could be developed as a grid that would further define the pushcart stalls while allowing the vendors to use the vertical supports to support produce stands.

3. Parcel 9

- a. Use Regulations. Allowed uses on Parcel 9 are Residential Uses and Local Retail/Service Uses.
- b. Dimensional Regulations. On Parcel 9, the maximum allowed FAR is four (4), and the maximum allowed building height is fifty-five (55) feet. Any building on Parcel 9 is subject to the provisions of Section 16-8, Restricted Roof Structure Districts, applicable to the North End.
- c. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 9 subject to design review pursuant to Section 49-7. In addition, the Boston Redevelopment Authority shall consider the design guidelines set forth in the Government Center Urban Renewal Plan for the historic Blackstone Block.
 - (i) The proposed development should include Ground Level Uses and should extend the Street Wall enclosure of the North End Neighborhood Park (Parcels 8 and 10) while also allowing the Haymarket pushcart/food vendor activities to continue to occur along Blackstone Street.
 - (ii) The Street Wall setback of the proposed building facades and massing and heights along the Blackstone Block and on each of the adjacent streets should be consistent with the character of the overall block pattern and architectural scale and massing of the Blackstone Block historic area and the North End.

4. Parcel 13

- a. Open Space Designation. Parcel 13 is hereby established as an Open Space Urban Plaza (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 13 are those uses allowed in Urban Plaza Open Space Subdistricts pursuant to Section 33-15 and, in addition, Seasonal and Festival Uses. Cultural Uses on Parcel 13 are conditional.

- c. Dimensional Regulations. On Parcel 13, for any Cultural Use conditionally granted the maximum allowed building height will be thirty-five (35) feet. The maximum allowed Lot Coverage will be fifteen percent (15%). The maximum allowed footprint area for any individual building will be twelve hundred (1,200) square feet.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 13 subject to design review pursuant to Section 49-7.
 - (i) Parcel 13 should be a landscaped plaza providing a forecourt to the development proposed on Parcel 12, as well as a major pedestrian connection between the North End and Faneuil Hall area.
 - (ii) The design and tree planting within the parcel should reinforce the Clinton Street view corridor to Christopher Columbus Park.

5. Parcels 14, 15, and 16

- a. Open Space Designation. Parcels 14, 15, and 16 along the waterfront are hereby established as a Recreation Open Space (OS-RC) Subdistrict, subject to the provisions of Article 33 applicable to OS-RC Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article shall govern.
- b. Use Regulations. Allowed uses on Parcel 14, 15, and 16 are those allowed in Recreation Open Space Subdistricts pursuant to Sections 33-10 and, in addition, Cultural Uses and Cafes, provided that any of the foregoing uses shall be conditional if located within a building any portion of which is within one hundred twenty-five (125) feet of the center line of State Street. Local Retail/Service Uses and Restaurant Uses (except cafes) on Parcels 14, 15, and 16 are conditional.
- c. Dimensional Regulations. For Parcels 14, 15, and 16, the maximum allowed Lot Coverage is fifteen percent (15%), and the maximum allowed building height is thirty-five (35 feet). The maximum number of stories is two (2) above the ground floor. The maximum allowed footprint area for any individual building on Parcels 14 and 15 is twelve hundred (1,200) square feet, provided that within one hundred

twenty-five (125) feet of State Street the maximum footprint of any building is twenty-four hundred (2,400) square feet.

- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcels 14, 15, and 16 subject to design review pursuant to Section 49-7.
- (i) Parcels 14, 15, and 16 should be designed to serve the numbers of Boston residents, workers, and tourists who walk to and along the waterfront. As the prime tourist area in Boston, the parcels should be programmed with a variety of attractions, both recreational and cultural, which should enhance the character of the waterfront, the Markets area, and the Rowe's Wharf area and connect to and reinforce Harbor Walk. A maritime theme reflecting Boston's strong historic connection to the sea should be emphasized in this area.
 - (ii) The design of these open spaces should complement the activities and design features of Christopher Columbus Park, the Quincy Market/Faneuil Hall area, the Broad Street district, and the future Central Wharf development. The spaces within the parcels should vary in scale, character, and activity, yet retain a coherent district design for all three blocks.
 - (iii) Special pavers should be used in the cross-Boulevard roadway between State Street and Broad Street to diminish the visual separation between these parcels. These Cross Streets should be raised to the plaza level and bollards or other elements should be located along the sidewalks of the Cross Streets to clearly delineate pedestrian and vehicular areas.
 - (iv) In response to the construction constraints of the tunnel box, Parcels 14, 15, and 16 are anticipated to be primarily open, paved surfaces with low planters providing sufficient soil depth for trees to be planted. Planters should be used where necessary to allow street trees to continue the Boulevard planting design. Planters should not be continuous structures or block visibility into the parcels. Wherever possible, planter heights should be established such that their walls may be used as seating elements.
 - (v) The principal pedestrian circulation space and activity areas should occur within the central area of the parcels. The central

area of the parcels is generally the center two-thirds (2/3) of the parcel width. For each of the parcels, the design should incorporate features such as a buffer zone with multiple rows of trees, planters and seating areas, pavilions, loggias, cafes, or other structures allowed in a Recreation Open Space Subdistrict to protect and enclose these centrally located activities and mitigate the surface traffic impacts.

- (vi) Along the northbound and southbound Boulevards the parcel sidewalks should have a minimum width of approximately seven and one-half (7-1/2) feet of paving. State Street sidewalks should have a minimum width of approximately fifteen (15) feet, while other Cross Streets in this area should have a minimum width of approximately ten (10) feet.
- (vii) In order to reinforce this important historic pedestrian cross-artery connection, a partial Street Wall along the State Street corridor, defined by features such as loggia or other architectural structures allowed under paragraph (b) of this Subsection 49-11.5, should frame both sides of State Street and enclose the activities programmed for Parcels 14 and 15. However, in order to also retain the continuity and visual connection between the Open Space parcels, the height, scale, and massing of any structure should not block the visual or spatial connections between the parcels. Therefore, at least fifty percent (50%) of the width of the parcel should remain visually open and accessible to pedestrians. Up to sixty-six percent (66%) of the width of the parcel could be a transparent structure, if the remaining width is open.

6. Parcel 17N

- a. Open Space Designation. Parcel 17N is hereby established as an Urban Plaza Open Space (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 17N are those uses allowed in Urban Plaza Open Space Subdistricts pursuant to Section 33-15 and, in addition, Cultural Uses. Local Retail/Service Uses and Restaurant Uses on Parcel 17N are conditional.

- c. Dimensional Regulations. On Parcel 17N, the maximum allowed FAR is two and one-quarter (2.25), and the maximum allowed building height is seventy-five (75) feet. The maximum allowed Lot Coverage is fifty percent (50%).
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project for a Cultural Use on Parcel 17N subject to design review pursuant to Section 49-7. If a Cultural Use is not developed on Parcel 17N, the design guidelines for Parcel 16 apply.
- (i) Parcel 17N together with Parcel 17S should provide for the extension of the Broad Street pedestrian access and view corridor to the Harbor and should physically link the Broad Street district and the waterfront. If Parcel 17N is developed as open space it should be designed as an integral part of Parcel 17S and should extend the activities programmed for Parcel 16. If a structure is proposed for a Cultural or Community Use, its design should complement the design of any structures on Parcel 12 in order to define or enclose the waterfront park area between Parcels 12 and 17N.
 - (ii) Any structure built on Parcel 17N should enclose the urban plaza in front of Rowe's Wharf and the High Street terminus. At the same time, the structure design should allow sufficient open space along the Boulevard edges so that the park space is extended by the Boulevard design and the edges of the parcel.
 - (iii) Any building on Parcel 17N should be predominantly transparent and detailed in a manner that it is visually open and easily accessible to the pedestrian. The design of the building and its details should complement the designs of other buildings and architectural elements in the corridor and be expressive of its status as a public structure and feature within the corridor.
 - (iv) Public access through the building should reinforce the pedestrian continuity and connection along the corridor and reinforce the design concept of a central axis within the parcels. Servicing of the building should be along either the east or the west side adjacent to the Boulevards and not between parcels.
 - (v) Any proposed extension of the building such as an arcade could follow the line of the inside edge of the sidewalk; however, the

width of the building should not visually close the sense of connection between the open space parcels of the waterfront and the parcels of the Financial District.

7. Parcel 17 South

- a. Open Space Designation. Parcel 17S is hereby established as Urban Plaza Open Space (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 17S are those allowed in an Urban Plaza Open Space Subdistrict pursuant to Section 33-15, and, in addition, Seasonal and Festival Uses, Cultural Uses, and Restaurant Uses.
- c. Dimensional Regulations. On Parcel 17S, the maximum allowed building height is thirty-five (35) feet. Maximum allowed Lot Coverage is fifteen percent (15%). Maximum allowed building footprint area for any individual building is twelve hundred (1,200) square feet.
- d. Design Guidelines.
 - (i) Parcel 17S, together with Parcel 18N, is a significant site along the Central Artery corridor because of its location at the terminuses of Broad Street and High Street and its adjacency to a major transportation ferry terminal, Rowe's Wharf. Because of the high number of pedestrians who will be crossing this parcel, a plaza should be developed to reinforce and enhance the quality of the pedestrian experience and the role of these parcels as gateways into the city.
 - (ii) Parcels 17S should be developed as a major formal plaza in conjunction with Parcel 18N, fronting and centered on the Rowe's and Foster's Wharf archway. High Street could be paved with special pavers. Bollards could be located along the curb line in a manner that reinforces the visual connection between these two parcels.
 - (iii) The view corridors and pedestrian crossings extending from Broad Street and High Street to the Harbor through the arch at

Rowe's and Foster's Wharf should be preserved and reinforced through dense rows of trees planted on either side.

- (iv) Small concession pavilions or other structures allowed in Urban Plaza Open Space Subdistricts could reinforce the view corridors and the overall formal design of this plaza. Tables and chairs for seasonal use could be located throughout the formally organized trees, planting areas, and paved areas.
- (v) A major sculptural element and/or water feature should be considered as a focal point on the plaza space within the parcel.

(↑As amended on May 9, 1996.)

↑SECTION 49-12. **Regulations Applicable to the Financial District/Central Artery Area.** The purpose of zoning regulations applicable within the Financial District/Central Artery Area is to promote additional high-quality open space in the downtown, including a Botanical Garden and urban Arboretum. A Botanical Garden/Conservatory will provide cultural and educational opportunities for the public as a four-season green oasis to enjoy even in the winter months. An urban Arboretum and garden will establish a major open space area in the downtown to accommodate residents and the thousands of daily workers and visitors to the downtown. A major pedestrian plaza area at Dewey Square will provide a significant entrance for transit commuters and visitors to the downtown.

The design of any development in the Financial District/Central Artery Area should respond to the open space, residential, and service needs of the adjacent community. In addition, the design should consider the historic resources of the adjacent Fort Point Channel, Russia Wharf, and Oliver/Purchase Streets areas which merit protection and public interpretation. Existing historic structures include scattered brick and stone commercial and warehouse buildings of five to seven stories, primarily of the post-1828 fire period; the Fort Point Channel area includes historic granite seawalls and bridges, and historic maritime sites, including Griffin's Wharf, the location of the Boston Tea Party in 1773, and Liverpool Wharf, a nineteenth-century portal of Irish immigration.

1. Parcel 18 North

- a. Open Space Designation. Parcel 18N is hereby established as Urban Plaza Open Space (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.

Use Regulations. Allowed uses on Parcel 18N are uses allowed in an Urban Plaza Open Space Subdistrict pursuant to Sections 33-15 and, in addition, Seasonal and Festival Uses, Cultural Uses, and Restaurant Uses.

- c. Dimensional Regulations. On Parcel 18N, the maximum allowed FAR shall be determined by the Lot Coverage and height restrictions. The maximum allowed building height is thirty-five (35) feet. Maximum allowed Lot Coverage is fifteen percent (15%). The maximum allowed building footprint area for any individual buildings shall be twelve hundred (1,200) square feet.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 18N subject to design review pursuant to Section 49-7.
 - (i) Parcel 18N, together with Parcel 17S, represents a significant site along the Central Artery corridor because of its location at the terminuses of Broad Street and High Street, and its adjacency to a major transportation ferry terminal, Rowe's Wharf. Because of the high number of pedestrians who will be crossing this parcel, a plaza should be developed to reinforce and enhance the quality of the pedestrian experience and the role of these parcels as gateways into the city.
 - (ii) Parcels 18N should be developed as a major formal plaza in conjunction with Parcel 17S, fronting and centered on the Rowe's and Foster's Wharf archway. High Street could be paved with special pavers. Bollards could be located along the curb line in a manner that reinforces the visual connection between these two parcels.
 - (iii) The view corridors and pedestrian crossings extending from Broad Street and High Street to the Harbor through the arch at Rowe's and Foster's Wharf should be preserved and reinforced through dense rows of trees planted on either side.
 - (iv) Small concession pavilions or other structures allowed under paragraph (b) of this Subsection 49-12.1 could reinforce the view corridors and the overall formal design of this plaza. Tables and chairs for seasonal use could be located throughout the formally organized trees, planting areas, and paved areas.

- (v) A major sculptural element and/or water feature should be considered as a focal point on the plaza space within the parcel.

2. Parcel 18 South

- a. Open Space Designation. Parcel 18S is hereby established as a Parkland Open Space (OS-P) Subdistrict, subject to the provisions of Article 33 applicable to OS-P Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article shall govern.
- b. Use Regulations. Allowed uses on Parcel 18S are those uses allowed in a Parkland Open Space Subdistrict pursuant to Section 33-9 and, in addition, Arboretum, Community Uses, and Restaurant Uses.
- c. Dimensional Regulations. On Parcel 18S, maximum allowed Lot Coverage is fifteen percent (15%), and the maximum allowed building height is thirty-five (35) feet. Building height shall be measured from grade unless the building is located on a raised landscaped terrace, in which case the building shall be measured from the terrace. The maximum allowed footprint area for any individual building shall be six thousand (6,000) square feet.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 18S subject to design review pursuant to Section 49-7.
 - (i) The portions of Parcel 18S which are adjacent to the proposed entry and exit ramps should be designed to minimize their visual impact. The structural covering of the ramps should allow for dense planting of trees and shrubs as well as supporting small pavilions in order to provide sufficient area and flexibility to allow the creation of an urban Arboretum.
 - (ii) In order to create a focal point in the center of the parcel, to draw pedestrians into and through the parcel, and to promote day and evening activities within this parcel on a seasonal, weekday, and weekend basis, a Restaurant and/or Cultural Use should be centrally located and cover a portion of either or both of the ramps within the park.

- (iii) The topographic changes in the parcel and the tree planting design should not obstruct views from the plazas at either end into the parcel and to any public structure within the parcel.
- (iv) Topographic changes, stepped walls, berms, and similar land-form elements are encouraged to mitigate the ramps and to reinforce a natural character for the park.
- (v) Additional lighting should be considered to activate the space in the evenings and to ensure safety.
- (vi) An urban Arboretum or other landscape feature could be created incorporating a diversity of tree types in order to create a display garden and establish an educational/activity within the corridor or to create a unique landscape element which provides for public gathering and interactions.

3. Parcels 19 and 21

- a. Open Space Designation. Parcels 19 and 21 are hereby established as Urban Plaza Open Space (OS-UP) Subdistricts, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcels 19 and 21 are those uses allowed in Urban Plaza Open Space Subdistricts pursuant to Section 33-15 and, in addition, Botanical Garden/Conservatory, including accessory office, retail, educational, public assembly, Restaurant, and storage uses, and Cultural Uses.
- c. Dimensional Regulations. On Parcels 19 and 21, the maximum allowed FAR is two and one-quarter (2.25) and the maximum allowed building height is seventy-five (75) feet. However, a maximum building height of one hundred twenty-five (125) feet is allowed for a predominantly transparent structure affording views for the pedestrian into the structure for a Botanical Garden/Conservatory or other Cultural Use with an atrium or domed structure.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcels 19 and 21 subject to design review pursuant to Section 49-7.

- (i) Parcels 19 and 21, which are proposed for Cultural and Open Space uses including a Botanical Garden/Conservatory proposed by the Massachusetts Horticultural Society, should be designed as major civic attractions and provide for environmental and educational activities within the corridor.
- (ii) If a large floor area is required for programmatic reasons, the building should define the street edges along the Boulevard sides of the parcel, yet maintain adequate sidewalks along the Boulevards and plazas at the Cross Streets to ensure the visual and pedestrian continuity along the larger park system. A primary building design element should respond to and extend the pedestrian movement along the center line of the downtown parcels. If access to the center portion of the parcel is not free of charge to the pedestrians, then pedestrian movement along the Boulevard sidewalk is particularly important. Where a large volume of pedestrian activity is expected to occur in conjunction with the Botanical Garden, a pedestrian bridge connecting Parcels 19 and 21 may be permitted if necessary for safety.
- (iii) The building should be designed as a highly transparent structure except for service entries. The opportunity for views into the Botanical Garden/Conservatory or cultural facility from the exterior pedestrian sidewalks should be maximized. Where transparency is not feasible, walls should include creative surface features to preclude large blank surfaces.
- (iv) If the Botanical Garden/Conservatory facility requires a bus drop-off and service entry within the parcels, such drop-offs should be located in a way that does not diminish the pedestrian access into the building and along the Boulevard. The location of any bus drop-offs for the cultural facility should be from Pearl and/or Congress Streets. The possibility of a bus or service access and drop-off below grade on Parcel 19 should be analyzed.
- (v) An approximately fifteen-foot-wide sidewalk lined with trees should be established at the northbound side of the parcel. An approximately ten-foot-wide sidewalk lined by trees shall be established along the southbound street. An approximately fifteen-foot-wide sidewalk on both sides of Pearl and Congress Streets should be established.

4. Parcel 20

- a. Parcel 20 is hereby established as a Special Study Area. Parcel 20 presently includes an electric substation owned by Boston Edison. The Massachusetts Department of Public Works has proposed this site to accommodate two vent towers for the depressed Central Artery. The MDPW has discussed the possibility of incorporating the vent towers into a large commercial structure. A plan for Parcel 20 shall be prepared which may include proposed new regulations governing use, dimensions, and design. Prior to the adoption of such new regulations, the use and dimensional regulations set forth below shall govern any Proposed Project on Parcel 20 and the issues identified below shall be considered in any Large Project Review for such Proposed Project. The following issues shall be considered in developing a plan and new regulations for Parcel 20:
- (i) economic viability and reuse of Parcel 20 and the remainder of the Boston Edison site and relationship to other uses in the Financial District and along Fort Point Channel;
 - (ii) effect of any development on the amount and duration of light on the adjacent site for the proposed Botanical Garden/Conservatory;
 - (iii) urban design and historic character of surrounding buildings and uses including the Russia Wharf Block and proposed open space and Cultural Uses on the Central Artery; and
 - (iv) relationship of any proposed structure and uses to Commonwealth and/or private tidelands and to policies and requirements of the Waterways Regulations implementing M.G.L. Chapter 91.
- b. Use Regulations. Allowed uses on Parcel 20 are Local Retail/Service Uses, Office Uses, Cultural Uses, Residential Uses, Hotel Uses, Restaurant Uses, Community Uses, Public Assembly Uses, Public Service Uses, Water Transit Uses, and parking accessory to a Residential Use. Parking accessory to other than Residential Use is conditional on Parcel 20.
- c. Dimensional Regulations. On Parcel 20, the maximum allowed FAR is ten (10) and the maximum allowed building height is one hundred fifty-five (155) feet; provided, however, that if a vent tower for the

depressed Central Artery is constructed on Parcel 20, the maximum allowed FAR shall be five (5) and the maximum allowed building height shall be two hundred thirty-five (235) feet for any Proposed Project built in conjunction with, or following, the construction of the vent tower. Additional dimensional requirements, including but not limited to yards, building setbacks and open space, shall be determined for any Proposed Project through Large Project Review.

5. Parcels 22N and 22S (Dewey Square)

- a. Open Space Designation. Parcels 22N and 22S are hereby established an Open Space Subdistricts. Parcel 22N is subject to the provisions of Article 33 applicable to Parkland Open Space (OS-P) Subdistricts. Parcel 22S is subject to the provisions of Article 33 applicable to Urban Plaza Open Space (OS-UP) Subdistricts. In addition, the provisions of this Article apply. In the event of a conflict between Article 33 and this Article, the provisions of this Article shall govern.
- b. Use Regulations. Allowed uses on Parcels 22N are those uses allowed in Parkland Open Space Subdistricts pursuant to Section 33-9. Allowed Uses on Parcel 22S are those uses allowed in Urban Plaza Open Space Subdistricts pursuant to Section 33-15. In addition, Cultural Uses, Restaurant Uses, and Local Retail/Service Uses are allowed on Parcels 22N and 22S.
- c. Dimensional Regulations. On Parcels 22N and 22S, the maximum allowed footprint area for any building shall be twelve hundred (1,200) square feet. The maximum allowed Lot Coverage is ten percent (10%) for Parcel 22N and fifteen percent (15%) for Parcel 22S. The maximum allowed building height at grade or on a raised landscape terrace shall be thirty-five (35) feet for Parcels 22N and 22S.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 22N or 22S subject to design review pursuant to Section 49-7.
 - (i) Parcel 22 is conceived as two major spaces: Parcel 22S, a paved urban plaza at Dewey Square, and Parcel 22N, a thematic garden. The Dewey Square plaza should be a minimum of fifteen percent (15%) of the total parcel area. It should be both a gateway/performance plaza and a major pedestrian link which would allow for an unobstructed new and

direct access for the high volume of pedestrian traffic from South Station to the Financial District, Downtown Crossing, and Federal Street. The remaining parcel area should be developed as a Thematic Garden and complement both Dewey Square plaza and the Botanical Garden program proposed for Parcels 19 and 21.

- (ii) The paved plaza should be large enough to incorporate pedestrian uses such as food vending, newspaper, or flower shops. A major piece of public sculpture should be displayed in order to create an identity and a focal point for Dewey Square and activate the space. The location of the sculpture should respond to the main entry of the South Station headhouse.
- (iii) The design for Parcel 22S, which is also known as Dewey Square, should maintain a public character and accessibility to the park; the use of high walls or mounds that obstruct views through the park or parcel from the sidewalks is discouraged. A major view corridor from the South Station headhouse entrance towards Rowe's Wharf and/or the cultural facility proposal for Parcels 19 and/or 21 should be recognized.
- (iv) In order to mitigate the existing/remaining tunnel vent stack and reduce the wind impacts upon the thematic garden, large sculptures, kiosks, and/or pavilions in addition to dense tree plantings should be considered as companions to any vent structure in Dewey Square area.
- (v) The Thematic Garden should be designed to provide a pedestrian experience, as well as a visual experience from the adjacent office towers. A variety of architectural and landscaping elements such as pavilions, sculptural elements, trellises, or low walls with viewing windows to define the edges of the parcel should be integral elements in the design.
- (vi) A pedestrian entry point to the Thematic Garden should be located at Dewey Square. The reconstructed vent structure may be incorporated into the design of one or more of the urban design elements which will surround Dewey Square.

(↑ As amended on January 26 and May 9, 1996.)

↓SECTION 49-13. **Regulations Applicable to the South Station/Central Artery Area.** The purpose of zoning regulations applicable within the South Station/Central Artery Area is to promote open space in the South Station area that provides the opportunity for passive recreational activities for the many transit commuters and visitors that enter Boston through the South Station public transportation node and to improve pedestrian connections between the South Station/Dewey Square area and the Financial District, Leather District and Chinatown.

The design of any development in the South Station/Central Artery Area should respond to the open space, residential, and service needs of the adjacent community. In addition, it should consider the historic resources of the adjacent South Station, Dewey Square, and Leather District areas which merit protection and public interpretation. The South Station Headhouse, listed on the National Register of Historic Places, has been a key element of the city core from the south. A principal historic urban design would be to redefine Dewey Square and reinforce the connections between its historic structures and those in the Leather District.

1. Parcel 23N

- a. Open Space Designation. Parcel 23N is hereby established as an Urban Plaza Open Space (OS-UP) Subdistrict, subject to the provisions of Article 33 applicable to OS-UP Subdistricts in addition to the provisions of this Article. In the event of a conflict between Article 33 and this Article, the provisions of this Article govern.
- b. Use Regulations. Allowed uses on Parcel 23N are uses allowed in an Urban Plaza Open Space Subdistrict, pursuant to Section 33-15.
- c. Dimensional Regulations. No buildings are allowed on Parcel 23N.
- d. Design Guidelines. This paragraph establishes design guidelines applicable to any Proposed Project on Parcel 23N subject to design review pursuant to Section 49-7.
 - (i) Parcel 23N should be planted with rows of trees and shrubs and/or flowers in a pattern that provides for pedestrian access across the parcel to and from South Station and linearly along the inside edge of the parcel.
 - (ii) Paving should define pedestrian desire lines, and benches and lighting should be provided to accommodate pedestrians.

- (iii) Special attention should be paid to the design of the Essex Street intersection, and pedestrian islands should be designed to reinforce and extend the pedestrian link between Chinatown and Dewey Square.

(↑ As amended on May 9, 1996.)

SECTION 49-14. **Regulations.** The Boston Redevelopment Authority may promulgate regulations to administer this Article.

SECTION 49-15. **Severability.** The provisions of this Article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

SECTION 49-16. **Definitions.** Words and phrases defined in Appendix A to this Article, where capitalized in this Article, have the meanings set forth in said Appendix A.

SECTION 49-17. **Appendix.** The following appendix to this Article is incorporated herein:

Appendix A - Definitions

APPENDIX A to ARTICLE 49

Definitions

For the purposes of this Article only, the following words and phrases, when capitalized, have the meanings indicated.

1. "Arboretum", an outdoor facility for the display of a diverse collection of plant materials, including trees, shrubs, and flowers, in a harmonious design, with educational and cultural uses such as a children's demonstration garden and plant display garden, and accessory structures not to exceed six thousand (6,000) square feet each for storage and administration uses associated with such Arboretum.
2. "Botanical Garden/Conservatory", a structured facility for the display of a diverse collection of plant materials from different climate zones around the world; environmental research, educational, and cultural uses associated with such facility; and accessory uses such as office, retail, restaurant and storage uses associated with the facility.
3. "Boulevards", the northbound and southbound pair of one-way streets to be built above the depressed Central Artery from Dewey Square to Causeway Street.
4. "Cafe", an eating establishment with a floor area of less than approximately fifteen hundred (1,500) square feet with table service serving food and drinks to the public for on-premises consumption.
5. "Central Artery Special District", the area defined in Section 49-3.
6. "Central Artery Special District Plan" has the meaning set forth in Section 49-2.
7. "Community Uses", an indoor recreational building including ball courts; gymnasium; play areas; community meeting rooms for educational or craft activities; day care center or social service uses for the local community; exterior play areas including ball courts, tot lots, and seating areas; community health center or clinic or other social service uses; and accessory kitchen uses.
8. "Cross Streets", streets which cross through the Boulevards between parcels.
9. "Cultural Uses", museum, theatre (not including motion picture theatre), music hall or opera house, indoor or outdoor performance space, public art display space, exhibition space for educational or cultural purposes, accessory uses such as office, retail, or restaurant associated with such use.

APPENDIX A to ARTICLE 49 (continued)

10. "Historic Building", any building listed in the Boston Landmarks Commission comprehensive survey of Boston as a Category One, Category Two, Category Three, or Category Four building.
11. "Local Retail/Service Uses", limited to stores primarily serving the local retail business needs of the neighborhood; art supply store; grocery store; barber shop; beauty shop; gift shop; shoe repair shop; retail bakery; restaurant; self-service laundry; newsstand; or vending kiosk.
12. "Lot Coverage", the percentage of the Lot Area excluding sidewalks abutting the Boulevards and Cross Streets, covered by the total footprint area of one or more buildings on the Lot.
- ↑13. "Office Uses", limited to offices of cultural groups; offices of community service organizations; business or professional offices; real estate, insurance, or other agency or government office; office building; post office; bank (other than drive-in) or similar work space.

(↑As amended on July 31, 1997.)
14. "Proposed Project", the substantial demolition, erection, or extension of any structure or part thereof, or the change of use of any structure or land, or the creation of open space uses permitted under Article 49, for which the Applicant is required to obtain a building or use permit.
15. "Residential Uses", limited to multifamily dwelling, lodging or boarding house, temporary housing shelters, and Group Residence Limited. Residential uses include any Affordable dwelling units, including but not limited to Affordable dwelling units which are rental units, condominiums, or limited equity share cooperatives.
16. "Restaurant Uses", restaurant, lunch room, cafeteria, Cafe, or other place for the service or sale of food or beverages to the public for on-premises consumption.
17. "Seasonal and Festival Uses", pushcart vendors; temporarily installed structures such as kiosks, pavilions, farmers' market stands and similar minor structures intended to accommodate pedestrian retail needs, removed from a site on either a daily or a weekly basis; and temporary performance space.

APPENDIX A to ARTICLE 49 (continued)

18. "Street Wall", the exterior wall or portion of the exterior wall of a Proposed Project that faces a street on which such Proposed Project is located, and is below the height at which a setback of a wall is required.
19. "Thematic Garden", an outdoor space enclosed by low walls, fences and buildings or other architectural features permitted in the OS-R area which provides a unique cultural and/or recreational activity within the space. Thematic garden could include such specialty uses as: an Asian or Chinese garden, a wind chime garden, demonstration garden, sculpture garden, or other similar activities.
20. "Underlying Zoning", all zoning regulations, with the exception of this Article, which are contained in the code.
21. "Zoning Relief", any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

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⇅ ARTICLE 42A

HARBORPARK DISTRICT

NORTH END/DOWNTOWN WATERFRONT AND
DORCHESTER BAY/NEPONSET RIVER WATERFRONT

(⇅ Article inserted on April 27, 1990*)

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*Date of public notice: March 17, 1990 (see St. 1956, c. 665. s. 5).

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 42A-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront within the Harborpark District as required by the provisions of the Harborpark Interim Planning Overlay District, Article 27C of this Code. Together with Article 42B, this Article establishes the Harborpark District. The goals and objectives of this Article and the Harborpark District Plan are to protect the Harborpark District from inappropriate land and water uses; to promote balanced growth along Boston's shoreline; to allow the waterfront to be used as a public resource and thereby to extend its use and benefit to the greatest number of people; to preserve and protect public open space and beach area within the harbor area; to promote public access to the waterfront; to promote residential and mixed-use commercial activities compatible with adjacent areas; to promote the economic growth and development of water-dependent and water-related commercial activity; to protect the working waterfront and preserve areas for water-dependent uses; to promote public waterborne transportation; and to promote uses which integrate uses, activities, and physical connections between the harbor and its surrounding neighborhoods.

SECTION 42A-2. Recognition of the Harborpark District Plan. In accordance with Section 27C-16 of this Code, which requires production of comprehensive planning policies, development controls, and design guidelines for the Harborpark District, the Zoning Commission hereby recognizes the Harborpark District Plan as the general plan for the North End/Downtown Waterfront and the Dorchester Bay/Neponset River Waterfront within the Harborpark District. The Harborpark District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the North End/Downtown Waterfront and the Dorchester Bay/Neponset River Waterfront within the Harborpark District. This Article is an integral part of and one of the means of implementing the Harborpark District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 42A-3. Physical Boundaries. The provisions of this Article are applicable only in the North End/Downtown Waterfront and the Dorchester Bay/Neponset River Waterfront of the Harborpark District. The boundaries of the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront and their respective subdistricts are as shown on the maps entitled "Map 1E Harborpark District: North End/Downtown Waterfront" and "Map 1F Harborpark District: North End/Downtown Waterfront" (supplemental to "Map 1 Boston Proper"); "Map 4A Harborpark District: Dorchester Bay/Neponset River Waterfront," "Map 4B Harborpark District: Dorchester Bay/Neponset River Waterfront," "Map 4C Harborpark District: Dorchester Bay/Neponset River Waterfront," and "Map 4D Harborpark District: Dorchester Bay/Neponset River Waterfront," (supplemental to "Map 4 South Boston"); "Map 5A Harborpark District: Dorchester Bay/Neponset River Waterfront" and "Map 5B Harborpark District: Dorchester Bay/Neponset River Waterfront" (supplemental to

"Map 5 North Dorchester"); and "Map 8B Harborpark District: Dorchester Bay/Neponset River Waterfront" (supplemental to "Map 8 South Dorchester"), of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 42A-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront within the Harborpark District and applies to the use or occupancy of any structure or land (including submerged land and Tidelands) and the erection, reconstruction, extension, or alteration of any structure or part thereof as specified in Section 4-1 regarding the conformity of structures and land to this Code. Exceptions to the provisions of this Article, pursuant to Article 6A, shall not be available except to the extent expressly provided in this Article or Article 6A. Application of the provisions of Article 27C to the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront within the Harborpark District is rescinded on the effective date of this Article, except as provided below. For the Downtown Waterfront Subdistrict, and the North End Waterfront Subdistrict, except where specifically otherwise indicated in this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 24, inclusive, of this Code. For the entire Harborpark District, where conflicts exist between the provisions of this Article and the remainder of the Code, the provisions of this Article shall govern. The following Proposed Projects, however, are exempt from the provisions of this Article, and are governed by the rest of this Code, including Article 27C:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

TIDELANDS REGULATIONS

↑SECTION 42A-5. **Chapter 91 Requirements.** In accordance with Chapter 91 of the General Laws of Massachusetts ("Chapter 91") and the regulations promulgated thereunder, certain Projects (as that term is defined below) located in Tidelands require a license ("Chapter 91 License") from the Commonwealth's Department of Environmental Protection ("DEP"). Section 18 of Chapter 91 requires that the planning board of a municipality in which a Project requiring a Chapter 91 license is located (i.e., the Boston Redevelopment Authority, in Boston) submit a written recommendation ("Section 18 Recommendation") stating whether the planning board believes the Project would serve a proper public purpose and would not be detrimental to the public's rights in Tidelands (the "Section 18 Standard"). Such a Section 18 Recommendation with respect to a Project requiring a Chapter 91 License and located in the Harborpark District shall be made by the Boston Redevelopment Authority in accordance with the provisions of Subsection 1 of this Section 42A-5. For the purposes of this Section 42A-5 only, the term "Project" shall mean a development, activity, or change of use requiring a Chapter 91 license.

1. Determination of Proper Public Purpose. The Boston Redevelopment Authority, in making a Section 18 Recommendation regarding a Project located in the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront within the Harborpark District, shall determine whether such Project serves a proper public purpose and would not be detrimental to the public's rights in Tidelands. The Boston Redevelopment Authority shall base such determination on the conformity of the Project to the provisions of Subsections 2 through 11 of this Section and on the extent to which the Project reasonably and appropriately preserves and enhances the public's rights in Tidelands including, without limitation, the public's:
 - (a) visual access to the water, whether such Project is for a Water-Dependent or non-Water-Dependent use on Private or Commonwealth Tidelands;
 - (b) rights to fishing, fowling, and navigation and the natural derivatives thereof, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Private or Commonwealth Tidelands;
 - (c) physical access to and along the water's edge for recreation, commerce, and other lawful purposes, and interest in public recreational opportunities at the water's edge and open space for public use and enjoyment, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Commonwealth Tidelands;

- (d) interest in the preservation of the historic character of the Project's site;
 - (e) interest in industrial and commercial waterborne transportation of goods and persons;
 - (f) interest in repair and rehabilitation of dilapidated piers that blight the Harborpark District and limit public access; and
 - (g) interest in safe and convenient navigation in Boston Harbor, including without limitation:
 - (i) navigation by water transportation Vessels, such as ferries, water taxis, water shuttles, or commuter vessels, including, without limitation, appropriate and convenient navigation by such Vessels outside of the Main Shipping Channel and other established channels;
 - (ii) navigation by deep draft Vessels, including without limitation, appropriate navigation in the Main Shipping Channel and other established channels and the requirements of turning, anchorage, and approaches to deep water piers and berths;
 - (iii) navigation by Recreational Vessels and small Commercial Vessels outside of the Main Shipping Channel and other established channels as necessary or convenient for such vessels to avoid interference with water transportation Vessels and deep draft shipping and as otherwise required for the purposes of harbor traffic management; and
 - (iv) navigation, as appropriate to the site, by U.S. Coast Guard, U.S. Naval, police, fire, and other public safety Vessels.
2. Public Access to the Waterfront and Open Space. Public access to the waterfront and Open Space is a central policy of the Harborpark District Plan. Pursuant to this policy, the Boston Redevelopment Authority shall not make a positive Section 18 Recommendation with respect to a Project that the Boston Redevelopment Authority determines will significantly interfere with public rights to walk or otherwise pass freely on Commonwealth Tidelands for purposes of commerce, recreation, and all other lawful activities; or on Private Tidelands for purposes of fishing, fowling, navigation, and the natural derivatives thereof. The Boston Redevelopment Authority shall find that the Section 18 Standard is not met if the Project does not comply with the following public access conditions:

- (a) To the extent that the Project site includes Flowed Private Tidelands, the Project shall allow continuous, on-foot, lateral passage by the public in the exercise of its rights therein, wherever feasible; any Pier, wharf, groin, jetty, or other structure on such Tidelands shall be designed to minimize interference with public passage, either by maintaining at least a five-foot clearance above the ground along the high water mark, by providing a stairway for the public to pass laterally over such structures or other means of lateral access substantially consistent with the foregoing; where obstruction of continuous access below the high water mark is unavoidable, the Project shall provide free lateral passage to the public above said mark in order to mitigate interference with the public's right to pass freely on Flowed Private Tidelands;
- (b) To the extent that the Project site includes Flowed or Filled Commonwealth Tidelands, or Filled Private Tidelands, the Project shall include reasonable measures to provide on-foot passage on such lands for the public in the exercise of its rights therein, in accordance with the following provisions:
 - (i) if the Project is not a Water-Dependent Use Project, said Project shall provide a public Pedestrian Access Network;
 - (ii) if the Project is a Water-Dependent Use Project, the Project shall provide for public passage by such means as are consistent with the need to avoid undue interference with the Water-Dependent Use or Uses in question and to avoid any safety hazard to people working on or visiting the Project site; measures which may be appropriate in this regard include, but are not limited to, allowing the public to pass laterally along portions of the Project shoreline, or transversely across the site to a point on the Project shoreline;
- (c) All Open Space areas established pursuant to Section 42A-6 located on Commonwealth Tidelands and all Public Access Facilities described in paragraphs (a) and (b) of this Subsection 2 shall be open and accessible to the public 24 hours a day. No gates, fences, or barriers may be placed on said Public Access Facilities or Open Space in a manner that would impede or discourage the free flow of pedestrian movement thereon. The foregoing shall not be deemed to prohibit the placing of temporary barriers as required in emergencies or in connection with construction, maintenance or the like, provided that interference with pedestrian access and passage is minimized to the extent reasonably practicable and consistent with public safety

and that such barriers are in place no longer than necessary. All such Public Access Facilities shall be Accessible to Physically Handicapped Persons as those terms are defined in Section 30-2. Active pedestrian use of such Open Space areas and Public Access Facilities shall be encouraged on a year-round basis, particularly for water-related activities, through such means as appropriate ground level uses of adjacent buildings and facilities and amenities designed to be attractive to pedestrians. Maintaining, cleaning, landscaping, and managing such Open Space areas and pedestrian access facilities shall at all times be the responsibility of the Chapter 91 licensee of the Project. The Applicant for any Project subject to or electing to comply with Large Project Review shall include in the urban design component of its Draft Project Impact Report, submitted pursuant to Large Project Review, an Open Space and Public Access Plan, including plans, drawings, specifications, descriptions of proposed uses, and descriptions of proposed management measures and access-related rules and regulations, if any, sufficient to permit the Boston Redevelopment Authority to determine the conformity of the Project to this Subsection 2 and Section 42A-6, and to make a Section 18 Recommendation.

- (d) Any Project required to provide Public Access Facilities in accordance with paragraph (b), above, shall encourage public patronage of such facilities by placing and maintaining adequate signage at all entryways and at other appropriate locations on the site; said signage shall:
 - (i) conform to Article 11, Signs, of the code;
 - (ii) conform, as applicable, to design guidelines for Harborwalk signage to be issued as regulations by the Boston Redevelopment Authority; and
 - (iii) include at least one sign, conforming to such design guidelines and placed in a prominent location, which advises the public of its access rights and discloses whatever access-related rules and regulations are in effect, if any.
- (f) Within any Maritime Economy Reserve Subdistrict public access shall be required as set forth above, but only to the extent to which it does not significantly interfere with or obstruct the operation of a maritime-dependent industrial use or pose a safety hazard to workers or visitors on the site of such use.

3. Creation of Housing on Land not Owned by a Public Agency. In a Project to construct ten (10) or more units of housing in the Harborpark District on a Lot not owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least ten percent (10%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent that such ten percent requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off-site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.2, and multiplying the result by the average per unit assistance granted by the Neighborhood Housing Trust for the twelve months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date.
4. Creation of Housing on Land Owned by a Public Agency. In a Project to construct four (4) or more units of housing on a Lot that is owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least twenty-five percent (25%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent such twenty-five percent requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off-site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by the Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.5, and multiplying the result by the average per unit assistance granted by the Neighborhood Housing Trust for the twelve months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date.

5. Construction of Affordable Housing Off Site. The following provisions shall govern the construction of Affordable dwelling units off-site in satisfaction of the requirements of Subsections 3 and/or 4 of this Section:
- (a) Subject to the approval of the Boston Redevelopment Authority, if a Project is located in the Downtown Waterfront Subdistrict or North End Waterfront Subdistrict, the Applicant may fulfill the obligations of Subsections 3 and/or 4 of this Section by creating housing off-site in the North End Housing Priority Overlay Area or North End neighborhood. In determining whether to approve the construction of Affordable dwelling units off site, the Boston Redevelopment Authority shall take into account the number of Affordable dwelling units which have been created in the North End Housing Priority Area or the North End neighborhood since the effective date of this Article. The Boston Redevelopment Authority shall base its approval on the standard that a minimum of twenty-five percent (25%) of the total number of housing units to be constructed after the effective date of this Article within the North End Housing Priority Overlay Area are to be Affordable.
 - (b) Subject to the approval of the Boston Redevelopment Authority, if a Project is located in the North End/Downtown Waterfront or Dorchester Bay/Neponset River Waterfront, other than in the North End Waterfront Subdistrict or the Downtown Waterfront Subdistrict, the Applicant may fulfill the obligations of Subsections 3 and/or 4 of this Section by creating housing off-site in the vicinity of the Project either within the Harborpark District or within the adjacent neighborhood.
6. Provision for Water Transportation Facilities. To promote an effective water transportation system and to ensure use of the waterfront and full access to recreational, commuting, and economic activities, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met with respect to a Project located in the Downtown Waterfront Subdistrict or North End Waterfront Subdistrict, unless the Project conforms to the requirements for water transportation facilities set forth below, as applicable:
- (a) Water Transportation Facility Requirement. In making a Section 18 Recommendation with respect to such a Project, the Boston Redevelopment Authority shall consider the extent to which provision is made on the Project site for waterborne passenger transportation facilities, including, without limitation, terminals and landings for water ferries, water shuttles, or water taxis, and free public landings, and in

the Downtown Waterfront Subdistrict, such facilities shall also include main terminals and passenger facilities for commuter boats, cruise boats, and ferries as appropriate to the scale, use, and location of the Project and in accordance with the water transportation guidelines of the Harborpark District Plan.

- (b) Shoreline Construction. In order to provide appropriate docking areas for emergencies and other harbor activities, all portions of the shoreline of a Project consisting of seawalls or bulkheads, but not including Piers, which are restructured and which abut waters accessible by Vessels shall be constructed, to the extent reasonably practicable, in such a manner as can accommodate such Vessels alongside for dockage.
7. Provision for Cultural Uses in the Downtown Waterfront Subdistrict. With respect to a Project located in the Downtown Waterfront Subdistrict involving the construction, alteration requiring a building permit, or change of use of ten thousand (10,000) square feet or more of gross floor area on the first story of a building, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless either (i) not less than twenty-five percent (25%) of the gross floor area of that portion of the first story of such building affected by such construction, alteration, or change of use is reserved, designed, and finished for one or more Cultural Uses otherwise allowed for such Project or conditional for such Project and permitted pursuant to Article 6, or (ii) a commensurate level of public attraction is attained through the provision of one or more such Cultural Uses elsewhere on the Lot, as approved by the Boston Redevelopment Authority. Such Cultural Uses shall be located and designed with particular emphasis on providing public attraction to the water's edge. The use of the gross floor area thus reserved, designed, and finished shall be limited to Cultural Uses and shall not be included in the calculation of FAR for the Project.

Notwithstanding the foregoing, the gross floor area located on the first story of a building in existence as of the date of issuance of the first building permit for the Project (but not any gross floor area contained in an addition to or extension of the first story of such an existing building) shall be excluded from the Project for purposes of computing required Cultural Uses pursuant to (i) above, unless the Project involves a change of use, or a substantial change in the character of the use as determined by the Boston Redevelopment Authority, of 10,000 square feet or more of gross floor area located on the first story of such an existing building.

8. Uses Allowed in Tidelands Proposed to be Filled and on Floating Structures. No portion of a Project located on Tidelands which are filled after the date of the first notice of hearing before the Zoning Commission on this Article, shall be erected, used, or arranged or designed to be used (a) except for a Water-Dependent Use otherwise allowed or conditionally permitted, subject to the provisions of Article 6 or (b) except as otherwise provided below. In making a Section 18 Recommendation with respect to a Project involving such new fill, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless such new fill is limited to the extent reasonably practicable by measures such as substituting pile-supported or floating structures for new fill or relocating the use to a position above the High Tide Line. The foregoing shall not, however, prohibit or limit the use of new fill the purpose of which is to eliminate irregularities in or repair previously altered portions of the shoreline included in the Project, provided that such new fill replaces previously authorized fill elsewhere along such shoreline on a one-to-one square foot basis (new fill to removed fill). The foregoing shall also not prohibit or limit the use of new fill the purpose of which is to accommodate mechanical or structural elements of the Project that enter the seabed, such as, without limitation, elevator shafts, ventilation shafts, utility conduits, piles, or the like, provided that such fill is limited to that reasonably required under the circumstances and provided, further, that all such mechanical elements, structural elements, and fill are wholly contained within the edges of a Pier. Piles are not considered "fill" for the purposes of this Article. New fill, in any event, is prohibited in any area where Pier construction or extension is prohibited by this Code.

No floating structure, other than a Vessel, shall be used or arranged or designed to be used except for a Water-Dependent Use otherwise allowed for the location of such structure or conditionally permitted, subject to the provisions of Article 6.

9. Regulations Governing Piers and Other Structures in the North End Waterfront Subdistrict. The following provisions apply in the North End Waterfront Subdistrict:
- (a) No portion of any building may extend beyond the 1880 Harbor Line;
 - (b) No Pier may be constructed and no Existing Pier may be extended, reconfigured, or reconstructed except in accordance with the following:
 - (i) The End of an Existing Pier may be extended, reconfigured, or reconstructed but not so as to cause any portion to extend more

than twelve (12) feet beyond the 1880 Harbor Line. Any extension of an Existing Pier beyond the 1880 Harbor Line shall be used exclusively as publicly accessible Open Space or as part of a Pedestrian Access Network. In no event shall any such extension beyond the 1880 Harbor Line be located seaward of that area declared to be non-navigable by the United States Congress in P.L. 90-312, and shown in magenta on that certain chart issued by the National Oceanic and Atmospheric Administration as chart number 13272, entitled "Boston Inner Harbor," 39th Edition, dated November 24, 1984.

- (ii) The Sides of an Existing Pier may be extended or reconfigured, but not so as to increase the width of the Existing Pier at any point by more than twenty-four (24) feet, which increased width shall be used exclusively to provide Public Access Facilities or publicly accessible Open Space in accordance with Subsection 2 of this Section 42A-5.
- (c) No portion of any new Pier, Existing Pier, or structure located thereon or use thereof may significantly obstruct or interfere with the operations of any existing U.S. Coast Guard facilities in the North End Waterfront Subdistrict.
- (d) The foregoing provisions of this Subsection 9 shall not limit the applicability to a Project of the provisions of Subsection 1 of this Section 42A-5, including without limitation subparagraph (g) thereof regarding non-interference with navigation.

10. Regulations Governing Piers and Other Structures in the Downtown Waterfront Subdistrict. The following provisions apply in the Downtown Waterfront Subdistrict:

- (a) No portion of any building may extend beyond the 1880 Harbor Line, except that a building not exceeding fifteen (15) feet in height, not exceeding a gross floor area of 400 square feet, and used exclusively in connection with a waterborne passenger transportation facility (such as, by way of illustration only, a ticket office or passenger waiting area) is permitted beyond the 1880 Harbor Line as a conditional use only, subject to the provisions of Article 6;
- (b) No Pier may be constructed and no Existing Pier may be extended, reconstructed, or reconfigured except in accordance with the following:

- (i) The End of an Existing Pier may be extended, reconstructed, or reconfigured, but not so as to cause any portion to extend more than fifty (50) feet beyond the 1880 Harbor Line. Any such extension beyond the 1880 Harbor Line shall be used exclusively as publicly accessible Open Space and/or Water Dependent Facilities of Public Accommodation, otherwise allowed or conditionally permitted, subject to the requirements of Article 6, for the location, pursuant to this Article. In no event shall any such extension beyond the 1880 Harbor Line be located outside of that area declared to be nonnavigable by the United States Congress, in P.L. 90-312, and shown in magenta on that certain chart issued by the National Oceanic and Atmospheric Administration as chart number 13272, entitled "Boston Inner Harbor", 39th Edition, dated November 24, 1984; and
- (ii) The Sides of an Existing Pier may be extended, reconstructed, or reconfigured, but not so as to prevent the safe and convenient navigation and docking by Vessels that appropriately and reasonably use the water area between Piers affected by such extension or reconfiguration, as determined by the Boston Redevelopment Authority consistent with Harborpark District Plan. For any Project subject to or electing to comply with the development review requirements set forth in Section 42A-8, the Applicant shall submit such plans, drawings, specifications, and studies as are necessary to permit the Boston Redevelopment Authority to determine that the foregoing requirement is met. If the End of an Existing Pier is extended beyond the 1880 Harbor Line, as permitted in clause (i) above, then the use of any extension of the north Side of an Existing Pier shall be limited to publicly accessible Open Space, and/or such Water Dependent Facilities of Public Accommodation, as are otherwise allowed or conditionally allowed, subject to the requirements of Article 6, for the location pursuant to this Article.
- (c) The foregoing provisions of this Subsection 10 shall not limit the applicability to a Project of the provisions of Subsection 1 of this Section 42A-5 including without limitation subparagraph (g) thereof regarding noninterference with navigation.

- 11. Regulations Governing Piers and Other Structures Elsewhere in the North End/Downtown Waterfront and the Dorchester Bay/Neponset River Waterfront. Within the North End/Downtown Waterfront and the Dorchester Bay/Neponset River Waterfront, except in the Downtown Waterfront

Subdistrict, and the North End Waterfront Subdistrict, no portion of any Pier, other than an Existing Pier, shall be erected, used, or arranged or designed to be used except as publicly accessible Open Space or for a Water-Dependent Use otherwise allowed or conditionally permitted, subject to the requirements of Article 6, for the location pursuant to this Article.

(↑ As amended on May 9, 1996.)

OTHER HARBORPARK REGULATIONS OF GENERAL APPLICATION

SECTION 42A-6. Open Space Requirements. Any Proposed Project in the Downtown Waterfront Subdistrict or North End Waterfront Subdistrict involving new construction at grade, except a Proposed Project with a gross floor area of 2,500 square feet or less used exclusively for one or more Water Dependent Uses, shall devote to Open Space at least fifty percent (50%) of the Lot Area of such Proposed Project.

For the purposes of this Article, the term "Open Space" shall mean land areas and areas on Piers excluding (a) any area occupied by a building or roofed structure; (b) any parking lot or parking area; (c) any street; (d) any private road or area devoted to motor vehicle use; (e) any salt-water area below the mean high tide line, other than areas on Piers; (f) any fresh water area more than ten (10) feet from the shoreline; (g) marina slips or floats or other floating structures; (h) swimming pools; and (i) tennis courts.

The foregoing notwithstanding, the following areas shall be deemed "Open Space":

- (v) any area occupied by a building not exceeding a Building Height of fifteen (15) feet and a gross floor area of 400 square feet and reserved exclusively for use as a Water Dependent Use or a recreational use permitted as a conditional use pursuant to Subsection 42A-18.7(b);
- (w) any area occupied by a street or private way open only to pedestrians and emergency vehicles;
- (x) any area at grade, pedestrian-accessible to members of the public 24-hours per day, covered by a weather-protective enclosure or roof structure, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A. For the purposes of this clause (x), Open Space shall not include any such area covered by a portion of a building, which portion is used or designed to be used for human occupancy or which contains or supports mechanical equipment principally serving portions of the building other than the enclosed Open Space area;
- (y) any area, at grade, otherwise meeting the definition of Open Space, as set forth in this Section, but covered by a pedestrian skywalk or skybridge, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A;

- (z) any area beneath an archway, which archway is not less than forty (40) feet wide at grade and forty (40) feet high at its apex and open at both ends.

All Open Space areas shall be Accessible to Physically Handicapped Persons, as those terms are defined in Section 30-2. The foregoing shall not prohibit occasional access to or over Open Space by service vehicles reasonably required to construct or maintain the structures on the Lot or by emergency vehicles. However, routine access to or over Open Space areas by vehicles transporting, loading, or unloading passengers or supplies for the normal operation of buildings and uses is not consistent with the foregoing definition. An area otherwise qualifying as Open Space, but occupied by Cultural Uses in satisfaction of the requirements of Section 42A-5.7, shall not be included in the calculation of Open Space for a Proposed Project; provided that the Board of Appeal may grant an exception, subject to the provisions of Article 6A, allowing such area to be counted in satisfaction of the requirements of both this Subsection and Subsection 42A-5.7 if the proposed use and design of such area is consistent with the goals of promoting active public use of Open Space areas and of promoting cultural activities on the waterfront, as certified to the Board of Appeal by the Boston Redevelopment Authority.

SECTION 42A-7. Waterfront Yard Area Requirements. Except as otherwise expressly provided in this Article, each Lot in the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront adjacent to or including the High Tide Line shall include a Waterfront Yard Area adjacent to and landward of such High Tide Line, excluding portions of the High Tide Line occupied by Piers. A Waterfront Yard Area shall also be required along the edges of any Pier. The required Waterfront Yard Area landward of the High Tide Line and the required Waterfront Yard Area on Piers shall be connected so as to provide a continuous path along the waterfront, with a minimum width at the places of connection of no less than twelve (12) feet. The dimensions of the required Waterfront Yard Area are set forth in Table A of this Article.

TABLE A

Required Depth of Waterfront Yard Area

<u>Location</u>	<u>Required Setback (Shoreline, excluding Piers)</u>	<u>Required Setback (Sides of Piers)</u>	<u>Required Setback (Ends of Piers)</u>
1. Downtown Waterfront Subdistrict	35'	12'	50'
2. North End Waterfront Subdistrict and Dorchester Bay/Neponset River Waterfront	35'	12'	35'

The provisions of Article 6A, Other Exceptions, shall be applicable to the Waterfront Yard Area requirement. The following additional provisions shall apply to the Waterfront Yard Area requirement:

1. Waterfront Yard Area Measurements. The depth of the Waterfront Yard Area shall be measured perpendicularly from the High Tide Line in the case of bulkheads, rip rap, fill, or shoreline and perpendicularly from the Ends and Sides of Piers. In locating the Waterfront Yard Area, the actual High Tide Line may be smoothed with such curves and chords as may be necessary to achieve a reasonably regular landward boundary. However, in no instance shall the Waterfront Yard Area be narrower than the required dimension measured perpendicularly from the actual High Tide Line. For the limited purpose of applying the Waterfront Yard Area requirements of this Article, a filled area or a structure consisting of both fill and Pier, projecting seaward of the prevailing shoreline, and having the form of a wharf or Pier, shall be treated as Pier.
2. Setback Requirements. No portion of any building or structure (including, without limitation, mechanical facilities associated with a building) shall be located in any Waterfront Yard Area, except walkways, landscape furniture, guardrails, cleats, bollards, pilings, boat ramps, and other structures (a) which do not materially interfere with pedestrian use of the Waterfront Yard Area or (b) which are required for operational or safety reasons to be located at the water's edge, provided that any resulting interference with pedestrian use of the Waterfront Yard Area is minimized to the extent economically practicable.

3. Exception to Waterfront Yard Area Setback Requirement. Any building or structure used for a Water Dependent Use, including without limitation, drydocks, enclosed or covered wet dock sheds, davits, hoists, mast markers, and the structures listed in Subsection 2 above, shall be permitted within the Waterfront Yard Area as necessary to avoid interference with any direct access to the water required for such Water Dependent Use.
4. No portion of any Waterfront Yard Area shall be located on any floating structure.

↑SECTION 42A-8. **Urban Design Guidelines.** This Section 42A-8 establishes urban design guidelines for the portion of the Harborpark District governed by this Article.

1. New development and rehabilitation shall reinforce the traditional pattern, height, and massing of the urban waterfront.
2. Buildings and spaces shall direct views and pedestrian movements towards the water.
3. Buildings on Piers shall be sited so as to reinforce the geometry of the Pier; and buildings near the water's edge shall not be massed so as to create a continuous wall along the water's edge.
4. Inland buildings shall reinforce the city street pattern and avoid continuous walls parallel to the water's edge by maintaining view and access corridors, especially at cross-streets.
5. Buildings shall be sited to provide view and access corridors towards the open water and to preserve views from Public Access Facilities and Open Space areas at the Ends of Piers. Open archways spanning a view corridor, which archways are not less than forty (40) feet wide at grade and forty (40) feet high at the apex and are oriented and designed to preserve the view corridor, as determined through design review, shall not be deemed inconsistent with this design guideline.
6. Building elements on a site shall generally step down in height towards the water's edge.
7. Open areas and buildings at or near the Ends of Piers shall offer opportunities for public views of the water and public amenities that attract the public to the water's edge.

8. Building massing shall enhance the air flow channels created by sea breezes that are beneficial to air quality in the City.
9. Open spaces, building entrances, shopfronts, shop windows, shop entrances, terraces, gardens, arcades, and similar elements shall be designed to enhance pedestrian activity, access to, and enjoyment of the waterfront. Blank walls, without windows or entrances facing onto pedestrian areas, shall be avoided to the extent practicable in building designs.
10. Facade treatment, building materials, and design details shall complement the traditional character of Boston's historic waterfront development patterns.
11. Setbacks, corner treatments, and other design details shall be used to minimize the sense of bulk of structures and ornament and decorative elements appropriate to the urban and historical waterfront context are encouraged.
12. Roofs of buildings shall be designed to minimize the visibility of roof structures and penthouses normally built above the roof and not designed to be used for human occupancy.
13. A Proposed Project should promote and enhance the quality of the pedestrian environment, by means such as: (a) pedestrian pathways connecting to the waterfront and, where appropriate, linking the waterfront and mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) use of materials, landscaping, public art, lighting, and furniture that enhance the pedestrian and waterfront environment; (d) pedestrian systems that encourage more trips on foot to replace vehicular trips; (e) other attributes that improve the pedestrian environment and pedestrian access to the waterfront and Boston Harbor; and (f) appropriate management and maintenance of pedestrian access within the Proposed Project.
14. In addition to the foregoing, design features of a Proposed Project shall take into consideration the characteristics of the site and its location in the Harborpark District and provide opportunities for special amenities, such as panoramic views of the Harbor, and shall enhance and reinforce any historic qualities of existing structures. New development shall be consistent with design guidelines established in the Harborpark District Plan.

(↑ As amended on May 9, 1996.)

↑SECTION 42A-9. **Environmental Protection and Safety Standards for Proposed Projects.** Any Proposed Project involving new construction in the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront within the Harborpark District shall conform to the environmental protection and safety standards established in this Section, to the extent economically practicable, as determined in Large Project Review.

1. Trash Disposal Standards. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include a trash compactor in an interior location for garbage and trash disposal, and shall provide for the maintenance and cleanliness of such compactor.
2. Area for Recyclable Materials. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include an interior area for the separation, temporary storage, and collection of recyclable materials. Such area shall be located in the vicinity of any off-street loading facility.
3. Provision of Safety Ladders. Any such Proposed Project, if adjacent to the water, shall provide a safety ladder or ladders extending from the water to an accessible area above the high water mark such that there shall be one safety ladder located approximately every one hundred (100) feet along those portions of the waterfront occupied by seawalls, piers, wharves, or other structures otherwise inaccessible to a person in the water. The foregoing notwithstanding, a safety ladder shall not be required in a location that would unreasonably interfere with docking facilities or other Water Dependent Use, provided that safety ladders are placed at intervals most closely approximating one hundred (100) feet and not so interfering.

(↑As amended on May 9, 1996.)

↑SECTION 42A-10. **Off-Street Parking.** The provisions of Article 23, Off-Street Parking, shall govern any Proposed Project in the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront within the Harborpark District. The off-street parking requirements stated as applicable to a specific floor area ratio set forth in Table B of Section 13-1 shall also apply to the same floor area ratio set forth in this Article. Where a use provided for in this Article is not included in any use item number listed in Article 23, off-street parking facilities shall be provided in accordance with the requirements for the use item number listed in Article 23 which is most similar to such use.

1. Notwithstanding any contrary provision of Article 23, the following supplementary regulations shall be applicable in the North End/Downtown Waterfront and the Dorchester Bay/Neponset River Waterfront:

- (a) Except in the North End Waterfront Subdistrict and Downtown Waterfront Subdistrict, off-street parking shall be provided for single family dwellings, two-family dwellings, and multi-family dwellings at a rate of not less than 1.0 space per dwelling unit.
- (b) Except in the North End Waterfront Subdistrict and Downtown Waterfront Subdistrict, off-street parking shall be provided for a Recreational Marina at a rate of not less than one (1) off-street parking space for every eight (8) docking spaces.
- (c) Except in the North End Waterfront Subdistrict and Downtown Waterfront Subdistrict, off-street parking shall be provided for slips and docking spaces for Commercial Vessels as follows:
 - (i) For each slip or docking space for a Commercial Vessel which neither takes on nor discharges passengers at such slip or docking space, other than crew members, two (2) off-street parking spaces shall be provided.
 - (ii) For each slip or docking space for a Commercial Vessel which takes on or discharges passengers for sightseeing, exhibits, special events, dining, dancing, or other public assembly activity, off-street parking spaces shall be provided in accordance with Section 23-2.
- (d) All off-street parking areas shall be located, designed, and maintained in accordance with Sections 23-8, 23-9, and 23-10. Subject to the provisions of Article 6, the Board of Appeal may approve a decrease up to fifty percent (50%) of the number of off-street parking spaces required by this section, provided that: (a) the Applicant reserves a site area sufficient to accommodate the unsatisfied requirement for the possible future expansion or peak seasonal usage of said off-street parking spaces; (b) any permit granted pursuant to this subsection shall be for a period not to exceed five (5) years, and shall be renewable in accordance with the provisions of Article 6; and (c) the Applicant provides for said area an environmentally suitable, permanent ground cover of pervious material. Such area shall not be used or built upon and shall be maintained as open space. However, such area may be developed for parking use in the future in accordance with the provisions of this section.
- (e) For any Proposed Project subject to Large Project Review and for which a Transportation Access Plan is required, the Boston Redevelopment Authority may determine that so-called "shared

parking" arrangements, in which parking spaces may be counted for different uses whose peak parking use periods are not coincident, will adequately meet parking demand associated with such Proposed Project, in which event the number of parking spaces otherwise required shall be correspondingly reduced.

- (f) No Proposed Project shall be required to provide parking in excess of that permitted under any applicable state or federal parking freeze or similar law.
- (g) No parking shall be permitted in any Public Access Facility provided pursuant to the provisions of Section 42A-5.2.

(↓As amended on May 9, 1996.)

↓SECTION 42A-11. **Off-Street Loading.** Within the North End/Downtown Waterfront and Dorchester Bay/Neponset River Waterfront, no off-street loading facilities shall be required for any Proposed Project with a gross floor area of less than 10,000 square feet. For any Proposed Project with a gross floor area of 10,000 square feet or more, the Applicant shall include in its Project Impact Report, prepared for Large Project Review, an analysis of the loading requirements of the Proposed Project, and of the impacts of projected loading activities, together with a description of any off-street loading facilities required to meet those requirements and to mitigate, to the extent economically practicable, projected impacts, and the Boston Redevelopment Authority shall determine the adequacy of such proposed loading facilities in accordance with Large Project Review.

(↓As amended on May 9, 1996.)

REGULATIONS APPLICABLE IN THE NORTH END/DOWNTOWN WATERFRONT

SECTION 42A-12. Downtown Waterfront Subdistrict. This Section establishes the Downtown Waterfront Subdistrict, as depicted on "Map 1F Harborpark District North End/Downtown Waterfront (supplemental to 'Map 1 Boston Proper')". The Downtown Waterfront Subdistrict contains the Downtown Water Transportation Overlay area, as depicted on said Map 1F, which overlay area is governed by the provisions of this Article and Code applicable generally to said Subdistrict and by the special provisions set forth in Section 42A-5.6(a). Within the Downtown Waterfront Subdistrict, the maximum allowed FAR is four (4) and the maximum allowed Building Heights are as follows:

- (a) Within Height Zone A, as shown on Map 1F, no buildings are allowed, except buildings which are permitted in Open Space, as provided in Section 42A-6;
- (b) Within Height Zone B, as shown on said Map 1F, the maximum allowed Building Height is fifty-five (55) feet.
- (c) Within Height Zone C, as shown on said Map 1F, the maximum allowed Building Height is one hundred ten (110) feet;
- (d) Within Height Zone D, as shown on said Map 1F, the maximum allowed Building Height is one hundred twenty-five (125) feet; and
- (e) Within Height Zone E, as shown on said Map 1F, the maximum allowed Building Height is one hundred fifty-five (155) feet.

For the limited purposes of computing required Open Space, pursuant to Section 42A-6, and FAR, pursuant to this Section 42A-9, for a Proposed Project in the Downtown Waterfront Subdistrict, an existing building, not located on a Pier, together with the land occupied by such existing building may be excluded from such Proposed Project, provided that there is also excluded such additional land, if any, as was required for such excluded existing building to comply with any applicable zoning requirements, adopted pursuant to Chapter 488 of the Acts of 1924, as amended, or Chapter 665 of the Acts of 1956, as amended, in effect as of the issuance of the original building permit for such existing building, as affected by any zoning relief obtained for such existing building (such applicable zoning requirements to be determined by the Boston Redevelopment Authority. Notwithstanding the foregoing, however, (i) the area of the land occupied by any additional building footprint created by an addition to or extension of such existing building shall be included in such Proposed Project for purposes of computing required Open Space, and (ii) the gross floor area of any addition to or extension of such existing building shall be included in the gross floor area of the Proposed Project for purposes of calculating the FAR of the

Proposed Project. For the purposes of this Section, an "existing building" shall mean a building in existence as of the date of issuance of the first building permit for the Proposed Project.

↑SECTION 42A-13. **North End Waterfront Subdistrict.** This Section establishes the North End Waterfront Subdistrict, as depicted on "Map 1E Harborpark District: North End/Downtown Waterfront (supplemental to 'Map 1 Boston Proper')." Within the North End Waterfront Subdistrict, the maximum allowed FAR is two (2) and the maximum allowed Building Height is fifty-five (55) feet. The North End Waterfront Subdistrict includes the North End Housing Priority Overlay Area, as depicted on said Map 1E, which Overlay Area is governed by the requirements of this Article and Code applicable generally to said Subdistrict and by the special requirements of Subsection 42A-5.5.

Within the North End Waterfront Subdistrict, in order to achieve the maximum public benefit and use of the Waterfront Yard Area and the most desirable urban design plan and/or as may be required to permit compliance with Subsection 42A-5.9, the Applicant may propose to the Boston Redevelopment Authority a reconfiguration of the Waterfront Yard Area for a Proposed Project, provided that the Proposed Project is subject to or the Applicant has elected to comply with Large Project Review and provided that the net area of the required Waterfront Yard Area is not reduced and the minimum depth of the Waterfront Yard Area from the High Tide Line, or the Sides or Ends of Piers, as the case may be, is twelve (12) feet at all locations. The Applicant shall include in its Large Project Review submissions an analysis, and such plans, drawings, and specifications as are necessary for the Boston Redevelopment Authority to determine that such configuration conforms to the requirements of this Section, and with the Harborpark District Plan. If the Boston Redevelopment Authority so determines, the required Waterfront Yard Area requirements applicable to such Proposed Project shall be based on such reconfiguration.

(↑As amended on May 9, 1996.)

SECTION 42A-14. **North End Local Business Subdistrict.** This Section establishes the North End Local Business Subdistrict as depicted on "Map 1E Harborpark District: North End/Downtown Waterfront (supplemental to 'Map 1 Boston Proper')." The North End Local Business Subdistrict is established in order to provide for appropriate and compatible zoning on this privately held site adjacent to an open space subdistrict. The maximum allowed FAR is two (2) and the maximum allowed Building Height is fifty-five (55) feet and the regulations of this Code for an L-2-55 Subdistrict are applicable.

SECTION 42A-15. **Open Space Subdistricts.** This Section establishes the two open space subdistricts within the North End/Downtown Waterfront, which subdistricts are identified in Table B and shown on Map 1E and Map 1F, both entitled "Harborpark

District: North End/Downtown Waterfront (supplemental to 'Map 1 Boston Proper')" of the Code. Any Lot within any such open space subdistrict is subject to Article 33, Open Space Subdistricts, and other provisions of this Code applicable to such subdistrict.

TABLE B

Open Space Subdistricts in the North End/Downtown Waterfront

<u>Location</u>	<u>Subdistrict Designation</u>
Waterfront Park	Parkland*
North End Playground	Recreation**

* Parkland open space subdistricts consist of land appropriate for and limited to passive recreational uses. See Section 33-9.

** Recreation open space subdistricts consist of land appropriate for and limited to active or passive recreational uses. See Section 33-10.

SECTION 42A-16. Prohibition of Planned Development Areas and Restriction of Urban Renewal Areas in the North End Waterfront Subdistrict and Downtown Waterfront Subdistrict. Within the North End Waterfront Subdistrict and the Downtown Waterfront Subdistrict, no planned development area as that term is used in Section 3-1A.a shall be permitted. However, within said subdistricts, parcels may be combined to form a single Lot notwithstanding that said parcels are separated by a street. On the Sargents Wharf Site and the Pilot House Extension Site, as those sites are described in "Map 1E Harborpark District: North End/Downtown Waterfront (supplemental to 'Map 1 Boston Proper')" of the Code, no urban renewal area shall be permitted, except in accordance with the requirements of Subsection 3-1A.b and the additional requirements of this Section 42A-16.

1. Sargents Wharf Site. A Proposed Project on the Sargents Wharf Site may be established as an urban renewal area if: (a) such Proposed Project is used exclusively for Residential Uses and uses accessory thereto, except for any area on the first story or second story devoted to Facilities of Public Accommodation and uses accessory thereto and office uses and uses accessory thereto; (b) not less than one hundred (100) of the dwelling units located on-site are Affordable; and (c) such Proposed Project is in substantial accord with the guidelines published by the Boston Redevelopment Authority in its request for proposals for the Sargents

Wharf Site dated March 23, 1989. An urban renewal area may be established in order to accomplish the planning objectives of achieving an appropriate density and site plan for the publicly-held Sargents Wharf Site. The Board of Appeal may grant an exception for FAR on this site pursuant to the provisions of Article 6A, but not exceeding a total FAR of three (3). The urban renewal area may provide for a maximum permitted Building Height of seventy-five (75) feet for any Proposed Project complying with the affordability requirement of clause (b) above; otherwise the maximum permitted Building Height shall be fifty-five (55) feet.

2. Pilot House Extension Site. A Proposed Project on the Pilot House Extension Site may be established as an urban renewal area if such Proposed Project provides for a structure adjacent to and landward of the historically significant Pilot House building and replaces the former Pilot House Extension building in a manner consistent with the height and massing of the Pilot House and in substantial accord with the guidelines published by the Boston Redevelopment Authority in its request for proposals for the Pilot House Extension, dated March 23, 1989. The Board of Appeal may grant an exception for FAR on this site pursuant to the provisions of Article 6A, provided that the increase in FAR is no greater than that necessary to achieve the foregoing stated objectives.

SECTION 42A-17. Rooftop Additions. No roof structure designed or used for human occupancy, access, or storage, and no roof structure, headhouse, or mechanical equipment normally built above the roof and not designed or used for human occupancy, shall be erected or enlarged on the roof of

- (a) an existing building within the Downtown Waterfront Subdistrict classified as a Category One, Category Two, Category Three, or Category Four structure in the Boston Landmarks Commission survey of buildings in Boston, or
- (b) any existing building in the North End Waterfront Subdistrict,

unless after public notice and hearing and subject to Sections 6-2, 6-3, and 6-4 the Board of Appeal grants permission therefor. In reaching its decision, said Board shall consider whether such roof structure is architecturally consistent with the distinctive historical and architectural character of the area. The Inspectional Services Department shall transmit a copy of the appeal for the conditional use to the Boston Landmarks Commission. The Boston Landmarks Commission may, within thirty days after the date of such transmittal, file with the Board of Appeal a recommendation, provided that if no such recommendation is received within said thirty days, the Board of Appeal may render its decision without such recommendation.

↓SECTION 42A-18. **Use Regulations Applicable in the North End Waterfront Subdistrict and Downtown Waterfront Subdistrict.** No land (including Tidelands and submerged land) water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, within the North End Waterfront Subdistrict or the Downtown Waterfront Subdistrict, except in conformity with the provisions of this Section and Section 8-6.

1. Inclusion of Day Care Facilities. The provisions of this Subsection 1 apply only to Proposed Projects in the North End Waterfront Subdistrict or Downtown Waterfront Subdistrict that exceed a Building Height of fifty-five (55) feet, or an FAR of two (2), or both. Any such Proposed Project having a gross floor area, not including floor area devoted to Residential Uses, Hotel Uses, or Cultural Uses, which equals or exceeds one hundred thousand (100,000) square feet, shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table C of this Section. An Applicant for a Proposed Project subject to the provisions of this Subsection 1 may fulfill its obligations under this paragraph by either (a) creating such facilities on-site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project within the North End Waterfront Subdistrict, the North End neighborhood, the Downtown Waterfront Subdistrict, or a downtown district identified under Section 3-1C; provided that any Proposed Project subject to the provisions of this Subsection 1 shall devote to day care facilities located on-site an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this Subsection 1 shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours. Such day care facilities provided as part of a Proposed Project shall not be included in the calculation of FAR for the Proposed Project.

TABLE C

Provision of Day Care Facilities

<u>Size of Proposed Project*</u> <u>(Gross Floor Area)</u>	<u>Minimum Day Care Facilities</u> <u>(Gross Floor Area)</u>
100,000 up to 200,000 sq.ft.	2% of gross floor area
200,000 up to 500,000 sq.ft.	4,000 sq.ft.
500,000 up to 1,000,000 sq.ft.	8,000 sq.ft.
More than 1,000,000 sq.ft.	12,000 sq.ft.

*Excluding floor area devoted to Residential, Hotel, or Cultural Uses.

2. Facilities of Public Accommodation. Within any Proposed Project in the Downtown Waterfront Subdistrict or North End Waterfront Subdistrict with a gross floor area of 10,000 square feet or greater, involving new construction or a change of use on the first story, the use of at least forty percent (40%) of the gross floor area of the first story of such Proposed Project shall be for indoor Facilities of Public Accommodation, otherwise allowed for such Proposed Project or conditional and permitted pursuant to Article 6.
3. Residential Use Restrictions on Piers in the Downtown Waterfront Subdistrict. Notwithstanding any other provision of this Section 42A-18 to the contrary, within the Downtown Waterfront Subdistrict, residential uses are forbidden uses on the first story of any portion of a Proposed Project located on a Pier.
4. North End Housing Priority Overlay Area. Notwithstanding any other provision of this Section 42A-18 to the contrary, within the North End Housing Priority Area, for any Proposed Project, a minimum of two (2) square feet of gross floor area shall be devoted to allowed residential uses for each square foot of gross floor area not devoted to such residential uses. An Applicant for any Proposed Project subject to the provisions of this Subsection 4 may construct or rehabilitate space for allowed residential uses within the North End Housing Priority Overlay Area, and aggregate the space for allowed residential uses and the space for other uses from different Proposed Projects of the Applicant's within the North End Housing Priority Overlay Area to meet the ratio required in this Subsection 4 so long as the different Proposed Projects are completed and certificates of occupancy issued within any consecutive period of twenty-four months.

5. Commercial Use Restrictions. Notwithstanding any other provision of this Section 42A-18 to the contrary, within the North End Waterfront Subdistrict, in any building fifty percent (50%) or more of the gross floor area of which is devoted to allowed and/or conditionally allowed Residential Uses, any uses other than such Residential Uses and uses accessory thereto shall be forbidden above the second floor.
6. Allowed Uses. Within the North End Waterfront Subdistrict and the Downtown Waterfront Subdistrict, except as otherwise provided in this Section 42A-18, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except in accordance with the provisions of this Subsection 6 and Subsection 7 of this Section 42A-18. Any use specified in this Subsection 6 is allowed as a matter of right, subject only to the requirements set forth in the description of such use below:
 - (a) Water-Dependent and Water-Related Uses.
 - (i) Water-Dependent Uses.
 - Dock, slip, pier, wharf, anchorage, or moorage for Commercial Vessels and Recreational Vessels awaiting servicing, provisions, on or off loading of people or cargo at delivery;
 - Facilities for the use, hire, or charter of Commercial Vessels, Recreational sailing or boating school, Boat Rental Establishment;
 - Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;
 - Aquarium and other cultural, educational, research, or training facilities dedicated primarily to marine purposes;
 - Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis (except that a ferry or cruise boat terminal is forbidden in the North End Waterfront Subdistrict);
 - Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;
 - Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, wave deflectors, and the like.

(ii) Water-Related Uses.

Installation, repair, or servicing of boating accessories, marine equipment, marine instruments, or marine motors;
Chandlery, woodworking shop, electrical shop, or similar use for the repair and maintenance of Vessels;
Sale of marine hardware, or boating or diving supplies and equipment.

(b) Open Space Recreational Uses

Open space for active or passive recreational use or dedicated to the conservation of natural resources, including but not limited to the waterways areas, beaches, reservations, parks, and playgrounds.

(c) Community Uses and Cultural Uses

Library, museum, gallery, concert hall, legitimate theater, auditorium, performance space, aquarium, or historical exhibit, open to public generally;
Community center or community service facility;
Day care center.

(d) Residential Uses

Building or group of buildings for occupancy by three or more families in separate dwelling units.
Group residence, limited, as defined in clause (22B) of Section 2-1.

(e) Hotel Uses (except conditional in the North End Housing Priority Overlay Area).

Hotel, conference facilities.

(f) Office Uses (except conditional in North End Waterfront Subdistrict)

Office of professional persons, not accessory to a main use;
Real estate, insurance, financial service institution, or other agency or government office;
Office or display or sales space of a wholesale, jobbing, or distributing house, provided that the office or display or sales space of a wholesale, jobbing, or distributing house is associated with a Water-Dependent Use;

Office building, post office, bank (other than drive-in bank), or similar establishments.

(g) Local Retail/Service Uses

Store primarily serving the local retail business or service needs of the neighborhood and harbor/waterfront users, including but not limited to chandlery, barber shop, beauty shop, shoe repair shop, self-service laundry, pick-up and delivery station of laundry or drycleaner, tailor shop, hand laundry;

Store retailing one or more of the following but not limited to: food, baked goods, groceries, drugs, tobacco products, clothing, drygoods, books, film, video, art, flowers, paint, hardware, and minor household appliances.

(h) General Retail Uses (except conditional in the North End Waterfront Subdistrict)

Department store, furniture store, general merchandise mart or other store serving the general retail business needs of a major part of the city, including accessory storage; provided that any Proposed Project for a general retail use shall be conditional if it: (a) establishes an occupancy for a general retail use having a gross floor area of seventy-five thousand (75,000) or more square feet; or (b) changes to a general retail use the use of a gross floor area of seventy-five thousand (75,000) or more square feet; or (c) enlarges a general retail use so as to result in a total gross floor area of seventy-five thousand (75,000) or more square feet.

(i) Restaurant Uses (except conditional in the North End Waterfront Subdistrict for any Proposed Project not subject to or electing to comply with Large Project Review)

Lunchroom, restaurant, cafeteria, or other place for the service or sale of food or drink for on-premises consumption, including outdoor cafe provided that at such cafe: food is served; hours of operation do not extend beyond 11:00 p.m.; no music or entertainment is provided; and such use does not significantly interfere with pedestrian access to or passage over Public Access Facilities or Open Space areas open to the public pursuant to Subsection 42A-5.2;

Place for sale and consumption of food and beverages (other than drive-in restaurants) providing dancing or entertainment or both; Pushcart food vendors.

(j) Educational Uses

Marine research and/or training institute for educational institution provided that water access is required for the program or its operation.

(k) Public Service Uses

Flood, water level, or tidal control facility; cable conduit, pipeline crossing, stormwater outlet, or other similar utility structure.

(l) Transportation Uses

Public transportation facility, rapid transit station.

(m) Public Assembly Uses

Cinema.

(n) Accessory and Ancillary Uses

Any of the following uses accessory or ancillary to an allowed use, subject to the limitations and restrictions of Article 10:

- (i) any use accessory or ancillary to, and ordinarily incident to, a lawful main use; provided that such use is not specifically forbidden in such district; and provided further that any such use shall be subject to the same restrictions, conditions, limitations, provisos and safeguards as the use to which it is accessory.
- (ii) a parking garage or parking lot for occupants, employees, students, and visitors provided that such use is accessory to a residential use under clause (d) of this Subsection or hotel use under clause (e) of this Subsection.
- (iii) an office, within a main building, of an accountant, architect, attorney, dentist, physician, or other professional person who resides in such building.
- (iv) an occupation for profit customarily carried on in a dwelling unit by a person residing therein provided that such occupation is carried on in a main building and requires only equipment

ordinarily incident to a dwelling unit and that no nonresident help is employed and that there is not trading in merchandise.

- (v) the keeping of marine life or laboratory animals incidental to a lawful education, community, or institutional use.
- (vi) the storage of flammable liquids and gases incidental to lawful use.
- (vii) permanent dwellings for personnel required to be resident on a Lot for the safe and proper operation of a lawful main use.
- (viii) day care center.
- (ix) health club facility.

7. Conditional Uses. Within the North End Waterfront Subdistrict and the Downtown Waterfront Subdistrict, except as otherwise provided in this Section 42A-18, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use subject the provisions of Article 6 unless such use is specified in this Subsection 7.

(a) Water-Dependent Uses

Recreational Marina, yacht club.

(b) Open Space Recreational Uses

Recreational structure on an Open Space area that is necessary and/or appropriate to the enhanced enjoyment of the particular Open Space area and is open to the public.

(c) Residential Uses

Convalescent, nursing or rest home.

(d) General Retail Uses (in the North End Waterfront Subdistrict)

Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage.

- (e) Restaurant Uses (in the North End Waterfront Subdistrict for any Proposed Project not subject to or electing to comply with Large Project Review)

Lunchroom, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, including outdoor cafe, provided that at such cafe: food is served; hours of operation do not extend beyond 11:00 p.m.; no music or entertainment is provided; and such use does not significantly interfere with pedestrian access to or passage over public access facilities or Open Space areas open to the public pursuant to Subsection 42A-5.2;

Place for sale and consumption of food and beverages (other than drive-in restaurants) providing dancing or entertainment or both; Pushcart food vendors.

- (f) Restaurant Uses (in the Downtown Waterfront Subdistrict)

Outdoor cafe not meeting all of the criteria set forth in clause (i) of Subsection 42A-18.6.

- (g) Take-out Restaurant

In a structure, sale over the counter, not wholly incidental to a local retail business or restaurant use, of on-premises prepared food or drink for off-premises consumption or for on-premises consumption; if, as so sold, such food or drink is ready for take-out.

- (h) Office Uses (in the North End Waterfront Subdistrict)

Office of professional persons, not accessory to a main use; Real estate, insurance, financial service institution, or other agency or government office;

Office building, post office, bank (other than drive-in bank) or similar establishment;

Office or display or sales space of a wholesale, jobbing, or distributing house, provided that the office or display or sales space of a wholesale, jobbing, or distributing house is associated with a Water-Dependent Use.

- (i) Parking Uses

Parking garage or parking lot not provided for under clause (n) of Subsection 42A-18.6.

(j) Accessory and Ancillary Uses

The following use accessory or ancillary to an allowed or a conditional use, subject to the limitations and restrictions of Article 10: a swimming pool or tennis court.

8. Forbidden Uses. Any use not specified as an allowed or conditional use in this Section 42A-18, except for such non-conforming uses as may be allowed to continue under the provisions of Article 9, shall be forbidden uses in the North End Waterfront Subdistrict and Downtown Waterfront Subdistrict. Without limitation, uses described in Use Items 34A and 38A of Table A of Section 8-7 shall be forbidden uses in the North End Waterfront Subdistrict and Downtown Waterfront Subdistrict. In addition, and notwithstanding any contrary provision hereof, any use of a floating structure, other than for a Water Dependent Use, shall be forbidden in the North End Waterfront Subdistrict and the Downtown Waterfront Subdistrict.

(↑As amended on February 22, 1991, September 30, 1993, October 6 and December 19, 1994, May 9 and November 21, 1996 and July 31, 1997.)

REGULATIONS APPLICABLE IN THE
DORCHESTER BAY/NEPONSET RIVER WATERFRONT

↓SECTION 42A-19. **Working Waterfront Subdistricts.** This Section establishes six (6) working waterfront subdistricts in the Dorchester Bay/Neponset River Waterfront. The working waterfront subdistricts are established in order to maintain, foster, and promote the maritime economy within the City of Boston; to provide for light manufacturing water-dependent uses; to preserve sites for maritime-dependent industrial uses along the waterfront consistent with applicable state policy and the needs of the maritime industry; to create opportunities for manufacturing and business on the waterfront; to promote land development that will protect the public health and general welfare; and to maintain a safe and healthy environment.

1. Dorchester Bay Waterfront Service Subdistrict. Within that portion of the Dorchester Bay/Neponset River Waterfront depicted on "Map 4C Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 4 South Boston')" as the "Dorchester Bay Waterfront Service Subdistrict", a maximum Building Height of thirty-five (35) feet and a maximum FAR of one (1) are allowed and the regulations of this Code for WS-1-35 subdistricts are applicable.
2. Clam Point Waterfront Service Subdistrict. Within that portion of the Dorchester Bay/Neponset River Waterfront depicted on "Map 5B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 5 South Dorchester')" as the "Clam Point Waterfront Service Subdistrict," a maximum Building Height of thirty-five (35) feet and a maximum FAR of one (1) are allowed and the regulations of this Code for WS-1-35 subdistricts and applicable.
3. Neponset River Waterfront Manufacturing Subdistrict. Within that portion of the Dorchester Bay/Neponset River Waterfront depicted on "Map 8B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 8 South Dorchester')" as the "Neponset River Waterfront Manufacturing Subdistrict," a maximum Building Height of thirty-five (35) feet and a maximum FAR of one (1) are allowed and the regulations of this Code for WM-1-35 subdistricts are applicable, except that (a) any residential uses allowed in an H subdistrict are allowed with a maximum Building Height of fifty-five (55) feet and a maximum FAR of one and one-half (1.5) provided that the Lot Area for a Proposed Project including such residential uses is thirty thousand (30,000) square feet or more and provided, further, that such Proposed Project is subject to, or elects to comply with, Large Project Review, (b) the Board of Appeal, pursuant to the provisions of Article 6A, may grant an exception for required depth of Waterfront Yard Area as set forth in Table A of Section

42A-7 for residential uses in compliance with Subsection 42A-19.3(a), provided that the depth of a Waterfront Yard Area shall not be less than twelve (12) feet, and (c) notwithstanding any contrary provision of Section 42C-3.1(w), the allowed number of slips and/or spaces for any of the following uses shall not be limited by such Section 42C-3(w):
Recreational Marina, rack, dry stack, or landside facility for seasonal dry storage of Recreational Vessels.

4. Cedar Grove Waterfront Manufacturing Subdistrict. Within that portion of the Dorchester Bay/Neponset River Waterfront depicted on "Map 8B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 8 South Dorchester')" as "Cedar Grove Waterfront Manufacturing Subdistrict," a maximum Building Height of thirty-five (35) feet and a maximum FAR of one (1) are allowed and the regulations of this Code for WM-1-35 subdistricts are applicable. Notwithstanding provisions of the Code to the contrary, within the Cedar Grove Waterfront Manufacturing Subdistrict any residential use allowed in an H-1-35 district shall be allowed, provided that the Lot Area for any Proposed Project including such residential uses is thirty thousand (30,000) square feet or more and provided, further, that such Proposed Project is subject to, or elects to comply with, Large Project Review. A roofed enclosure of an outdoor storage facility for recycled and recyclable materials shall not be included in the computation of the gross floor area of a Proposed Project, provided that any floor area within such enclosure occupied by any other use, such as, without limitation, office or manufacturing uses, shall be included in the computation of gross floor area. Any Proposed Project within the Cedar Grove Waterfront Manufacturing Subdistrict subject to Large Project Review shall include in its Large Project Review submissions an analysis of the manner in which the Proposed Project reinforces the physical and visual connections between the subdistrict and the Neponset River.
5. Neponset Circle Waterfront Manufacturing Subdistrict. Within that portion of the Dorchester Bay/Neponset River Waterfront depicted on "Map 8B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 8 South Dorchester')" as the "Neponset Circle Waterfront Manufacturing Subdistrict," a maximum Building Height of thirty-five (35) feet (except for cranes or other mechanical devices required for operation of the allowed use) and a maximum FAR of one (1) are allowed, and the regulations of this Code for WM-35 subdistricts are applicable, except that (a) office uses described in Subsection 42C-3.3(d) shall be allowed in any building existing as of the effective date of this Article.

6. South Boston Maritime Economy Reserve Subdistrict. Within that portion of the South Boston Waterfront depicted on "Map 4A Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 4 South Boston')" and "Map 4B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 4 South Boston')" as the "South Boston Maritime Economy Reserve Subdistrict," a maximum Building Height of fifty-five (55) feet (except for cranes, silos, storage facilities, or other mechanical devices or facilities used for the transfer of goods from land to waterborne vessels or for the processing of such goods) and a maximum FAR of two (2) are allowed, and the regulations of this Code for MER-2-55 subdistricts are applicable.

(↑As amended on May 9, 1996.)

SECTION 42A-20. Cedar Grove General Business Subdistrict. This Section establishes the Cedar Grove General Business Subdistrict as depicted on "Map 8B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 8 South Dorchester')." Within the Cedar Grove General Business Subdistrict a maximum FAR of one (1) and a maximum Building Height of thirty-five (35) feet are allowed and the regulations of this Code for a B-1-35 subdistrict are applicable.

SECTION 42A-21. Residential Subdistricts. This Section establishes two (2) residential subdistricts within the Dorchester Bay/Neponset River Waterfront.

1. Neponset River Residential Subdistrict. Within that portion of the Dorchester Bay/Neponset River Waterfront depicted on "Map 8B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 8 South Dorchester')" as the "Neponset River Residential Subdistrict," a maximum Building Height of thirty-five (35) feet and a maximum FAR of one (1) is allowed and the regulations of this Code for H-1-35 subdistricts are applicable.
2. Cedar Grove Residential Subdistrict. Within that portion of the Dorchester Bay/Neponset River Waterfront depicted on "Map 8B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 8 South Dorchester')" as the "Cedar Grove Residential Subdistrict," a maximum Building Height of thirty-five (35) feet and a maximum FAR of one (1) are allowed and the regulations of this code for R-.5-35 subdistricts are applicable.

SECTION 42A-22. Columbia Point Special Study Overlay Area. This Section establishes the Columbia Point Special Study Overlay Area as depicted on "Map 5A Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 5 North Dorchester')." A comprehensive plan for the Columbia Point Special

Study Overlay Area shall be developed, and shall address at a minimum, the following: (a) an appropriate traffic plan; (b) an appropriate land use plan and zoning for the controlled development of back office and new economy uses; (c) an appropriate land use plan and zoning to preserve and enhance open space in the Columbia Point Special Study Overlay Area; (d) an appropriate land use plan and zoning that addresses institutional uses and expansion; and (e) the promotion and enhancement of mixed-income housing. Within the Columbia Point Special Study Overlay Area there are established the following eight (8) subdistricts as depicted on said Map 5A and regulated by the provisions of this Code applicable to subdistricts thus designated:

- (a) H-1-55
- (b) H-2-65
- (c) H-2-D-65
- (d) B-1-55
- (e) B-2-55
- (f) M-1-55
- (g) I-2-65
- (h) I-2-D-65

SECTION 42A-23. Open Space Subdistricts. This Section establishes five (5) open space subdistricts in the Dorchester Bay/Neponset River Waterfront indicated on Table D and shown on "Map 4C Harborpark District: Dorchester Bay/Neponset River Waterfront" and "Map 4D Harborpark District: Dorchester Bay/Neponset River Waterfront" (supplemental to "Map 4 South Boston") and on "Map 5A Harborpark District: Dorchester Bay/Neponset River Waterfront" and "Map 5B Harborpark District: Dorchester Bay/Neponset River Waterfront" (supplemental to "Map 5 North Dorchester") and on "Map 8B Harborpark District: Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 8 South Dorchester')." Any Lot within any such open space subdistrict is subject to the provisions of this Code applicable to such subdistrict, including without limitation, Article 33, Open Space Subdistricts.

TABLE D

**Open Space Subdistricts in the
Dorchester Bay/Neponset River Waterfront**

<u>Location</u>	<u>Subdistrict Designation</u>
Savin Hill	Shoreland*
Victory Park	Shoreland*
Neponset Shoreland	Shoreland*
Lower Mills Shoreland	Shoreland*
Castle Island/Columbus Park	Shoreland*

- * Shoreland open space subdistricts consist of land bordering on tidewater or the ocean, including land over which the tide ebbs and flows, or any bank, marsh, beach, dune, swamp, salt meadow, tidal floor, or other low land subject to tidal action or coastal storm flowage. See Section 33-11.

MISCELLANEOUS PROVISIONS

SECTION 42A-24. **Regulations.** The Boston Redevelopment Authority may promulgate regulations to administer this article.

SECTION 42A-25. **Rights to Navigation.** No provision of this code shall be construed as a limitation upon the navigational rights of vessels or upon the regulation thereof by the United States.

SECTION 42A-26. **Severability.** The provisions and requirements of this Article are severable, and if any such requirements or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision or requirement of this Article.

SECTION 42A-27. **Definitions.** Words and phrases defined in Appendix A to this Article, when capitalized in this Article, shall have the meanings set forth in said Appendix A.

SECTION 42A-28. **Appendices.** The following appendices are attached to and are hereby made part of this article:

1. Appendix A - Definitions
2. Appendix B - Water-Dependent Uses and Facilities of Public Accommodation

APPENDIX A to ARTICLE 42A

Definitions

For the purposes of Articles 42A, 42B, 42C, and 42D only, the following words and phrases, when capitalized, shall have the meanings indicated.

1. "Adjusted Income" is defined as it is in 24 CFR 813.102, as amended, or as set forth in regulations adopted in accordance with Subsections 42A-5.3, 42A-5.4, or 42A-5.5, or 42B-5.3, 42B-5.4, or 42B-5.5, as the case may be.
2. "Affordable" means, in the case of an owner-occupied dwelling unit, requiring the expenditure by a Low-Income, Moderate-Income, or Upper Moderate-Income Household for mortgage and insurance payments, real estate taxes, and condominium fees of not more than thirty percent (30%) of its Adjusted Income to occupy the unit, and, in the case of a renter-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household or Upper-Moderate Income Household for rent payments of not more than thirty percent (30%) of its Adjusted Income to occupy the unit.
3. "Annual Income" is defined as it is in 24 CFR 813.106, as amended, or as set forth in regulations adopted in accordance with Subsections 42A-5.3, 42A-5.4, or 42A-5.5, or 42B-5.3, 42B-5.4, or 42B-5.5, as the case may be.
4. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 42A-4, 42B-4, 42C-2, or 42D-2, as the case may be, or the authorized agent of any such person or entity.
5. "Boat Rental Establishment" means any use or establishment that involves the renting, hiring, or instruction in the use of any sailboat, rowboat, or other Recreational Vessel that does not require an operator's license by the United States Coast Guard or the conferring of seasonal use privileges in a fleet of such Recreational Vessels.
6. "Building Height," notwithstanding the provisions of clause (23) of Section 2-1, means (a) for a flat roof, the vertical distance from the grade to the top of the highest point of the roof beams excluding mechanical roof structures and penthouses normally built above the roof and not used or designed to be used for human occupancy, and (b) for a pitched roof, the vertical distance from grade to the lower (i) of the mean level of the highest gable or of the slope of a hip roof or (ii) of the top of the structure of the highest occupied floor. A mansard roof shall be considered a flat roof. For Piers, grade shall be measured from the top

APPENDIX A to ARTICLE 42A (continued)

of the deck of the Pier. The foregoing notwithstanding, except within the Downtown Waterfront Subdistrict, the North End Waterfront Subdistrict, the Charlestown Gateway Subdistrict, and the Charlestown Navy Yard Subdistrict, mechanical roof structures and penthouses normally built above the roof and not used or designed for human occupancy shall not be excluded in calculating Building Heights if such structures and penthouses, in the aggregate, occupy more than thirty-three and one-third (33-1/3%) of the roof area.

7. "Bulkhead" means a vertical structure used to create an edge between the land and the water against which Vessels can be placed to unload or engage in other activities.
8. "Chapter 91" means M.G.L. Chapter 91 and implementing regulations, codified as of the effective date of this article at 310 C.M.R. 9.00, as said statute and regulations may, from time to time, be amended.
9. "Charlestown Navy Yard Master Plan" means that certain master plan of the Charlestown Navy Yard adopted by the Boston Redevelopment Authority on _____, 1990.
- ↑10. "Charlestown Waterfront" means the Charlestown Gateway Subdistrict, Charlestown Maritime Economy Reserve Subdistrict, Charlestown Navy Yard Subdistrict, Mystic River Waterfront Manufacturing Subdistrict, Terminal Street Waterfront Manufacturing Subdistrict, Little Mystic Waterfront Service Subdistrict, Charlestown General Industrial Subdistrict, Little Mystic Waterfront Residential Subdistrict, Paul Revere Landing Open Space Subdistrict, Little Mystic Waterfront Access Open Space Subdistrict, William J. Barry Playground Open Space Subdistrict, and J.J. Ryan Playground Open Space Subdistrict, as such Subdistricts are shown on the maps entitled "Map 2B Harborpark District: Charlestown Waterfront" and "Map 2C Harborpark District: Charlestown Waterfront" (supplemental to "Map 2 Charlestown"), of the series of maps entitled "Zoning Districts City of Boston," as amended.

(↑As amended on June 14, 1990 and January 28, 1991)

11. "Commonwealth Tidelands" has the meaning ascribed in Chapter 91.
12. "Cultural Uses" means use for legitimate theater, concert hall, auditorium, museum, gallery, performance space, aquarium, or historical exhibit.

APPENDIX A to ARTICLE 42A (continued)

13. "Dorchester Bay/Neponset River Waterfront" means the Dorchester Bay Waterfront Service Subdistrict, the Clam Point Waterfront Service Subdistrict, the Neponset River Waterfront Manufacturing Subdistrict, the Cedar Grove Waterfront Manufacturing Subdistrict, the Neponset Circle Waterfront Manufacturing Subdistrict, the South Boston Maritime Economy Reserve Subdistrict, the Cedar Grove General Business Subdistrict, the Neponset River Residential Subdistrict, the Cedar Grove Residential Subdistrict, the Savin Hill Shoreland Open Space Subdistrict, the Victory Park Shoreland Open Space Subdistrict, the Neponset Shoreland Open Space Subdistrict, the Lower Mills Shoreland Open Space Subdistrict, the Castle Island/Columbus Park Shoreland Open Space Subdistrict, and the subdistricts included within the Columbia Point Special Study Overlay Area.
- ↑14. "1880 Harbor Line" means that line so designated on the maps entitled "Map 1E Harborpark District: North End/Downtown Waterfront" and "Map 1F Harborpark District: North End/Downtown Waterfront" (supplemental to "Map 1 Boston Proper"); and "Map 2B Harborpark District: Charlestown Waterfront" and "Map 2C Harborpark District: Charlestown Waterfront" (supplemental to "Map 2 Charlestown"), of the series of maps entitled "Zoning Districts City of Boston," as amended.
- (↑As amended on June 14, 1990)
15. "End" of a Pier means the edge of the Pier that is most nearly opposite the edge connecting the Pier with dry land and most nearly parallel to the 1880 Harbor Line or, if the 1880 Harbor Line is not applicable, the general direction of the shoreline.
16. "Existing Pier" means a Pier existing as of the date of the first notice of hearing for the adoption of this Article before the Zoning Commission. However, within the Downtown Waterfront Subdistrict and the North End Waterfront Subdistrict an "Existing Pier" means a Pier or filled area seaward of the North End/Downtown Prevailing Shoreline, which Pier or filled area existed as of the effective date of this Article. Within the Downtown Waterfront Subdistrict, an Existing Pier shall also mean a Pier or filled area seaward of the North End/Downtown Prevailing Shoreline, which Pier or filled area existed in 1938 as depicted in the Atlas of the City of Boston: Boston Proper and Back Bay, (Philadelphia: G. W. Bromley and Co., 1939).
17. "Facility of Public Accommodation" means a use so described in Appendix B.

APPENDIX A to ARTICLE 42A (continued)

18. "FAR" means floor area ratio, as defined in Section 2-1, subject to the provisions of Section 15-1 regarding calculation of the area of the Lot.
19. "Filled Tidelands" means former submerged lands and tidal flats which are no longer subject to tidal action due to the presence of fill.
20. "Flowed Tidelands" means present submerged lands and tidal flats which are subject to tidal action at the time of license application under Chapter 91.
21. "Harborpark District" means the Charlestown Waterfront, the North End/Downtown Waterfront, and the Dorchester Bay/Neponset River Waterfront.
22. "Harborpark District Plan" means the plan of the same name adopted or to be adopted by the Boston Redevelopment Authority.
- ↑23. "High/Low Tide Line" means the present arithmetic mean of the water heights observed at high or low tide, as applicable, over a specific 19-year Metonic Cycle (the National Tidal Datum Epoch) and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

(↑ As amended on June 14, 1990)

24. "Index" means Consumer Price Index for all Urban Consumers, Boston, MA, all items - Series A (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor or, in the event such Consumer Price Index ceases to be published by the United States Department of Labor, a similar published index measuring consumer price levels in the Boston Metropolitan Area, as designated by the Boston Redevelopment Authority.
25. "Lot", notwithstanding the provisions of clause (26) of Section 2-1, means a parcel of land, including land under water (a) whether or not platted, (b) in common control and combined for a single Proposed Project or in single ownership, and (c) except as otherwise provided in Section 42A-16, not divided by a street.
26. "Lot Area", notwithstanding the provisions of clause (27) of Section 2-1, means the horizontal area of the Lot exclusive (a) of any area in a street, (b) of any area in a private way devoted to public use by motor vehicles, (c) of any fresh water area more than ten (10) feet from the shoreline, and (d) of any salt water area below the High Tide Line. The foregoing notwithstanding, (x) the horizontal area of any Pier located in the Lot and (y) a private way open to vehicles for the purpose of accessing the Lot only and a street or private way open only to

APPENDIX A to ARTICLE 42A (continued)

pedestrians and emergency vehicles shall be included in the Lot Area. Further, if a Proposed Project shall result in a net reduction in the horizontal area of Piers on the Lot, then Lot Area shall be computed on the basis of the horizontal area of said Piers as of the commencement of the Proposed Project.

27. "Low-Income Household" means any household whose Annual Income does not exceed 50% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
28. "Main Shipping Channel" means the shipping channel for deep draft vessels in the Boston Inner Harbor as depicted by dashed lines on that certain chart issued by National Oceanic and Atmospheric Administration as chart number 13272 and entitled "Boston Inner Harbor," 39th Edition, dated November 24, 1984.
29. "Marina Amenity Uses" means those uses identified as such in Subsection 42B-18.5.
30. "Maritime Economy Reserve Subdistrict" means a subdistrict subject to the provisions of this Code applicable within an MER district.
31. "Median Gross Income" is defined as it is by the United States Department of Housing and Urban Development, pursuant to 24 CFR Section 813.102, as amended, or as set forth in regulations adopted in accordance with Subsections 42A-5.3, 42A-5.4, and 42A-5.5, or 42B-5.3, 42B-5.4, or 42B-5.5, as the case may be.
32. "Moderate-Income Household" means any household whose Annual Income does not exceed 80% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
33. "Natural High/Low Tide Line" means the historic high/low tide line that would be observed except for alteration of the shoreline by filling, dredging, or impounding.
34. "North End/Downtown Waterfront" means the Downtown Waterfront Subdistrict, North End Waterfront Subdistrict, North End Local Business Subdistrict, Waterfront Park Parkland/Open Space Subdistrict, and North End Playground Recreation Open Space Subdistrict.
35. "North End/Downtown Prevailing Shoreline" means the line, so entitled, shown on Map 1E Harborpark District (supplemental to Map 1 Boston Proper).

APPENDIX A to ARTICLE 42A (continued)

36. "Open Space" has the meaning set forth in Section 42A-6 or Section 42B-6, as the case may be.
37. "Pedestrian Access Network" means a pedestrian network of a kind and to a degree that is appropriate for the site and consisting of, at a minimum:
 - (i) walkways and related facilities along the entire length of the shoreline, and along the edges of any Piers or filled areas, which walkways shall be no less than twelve (12) feet in width; and
 - (ii) appropriate connecting walkways that allow pedestrians access to shoreline and Pier walkways from public ways or other Public Access Facilities to which any Commonwealth Tidelands or Private Tidelands on the site are adjacent.
38. "Pier" means any structure that extends seaward of the High Tide Line, but excluding any floating structure.
39. "Pierhead Line" means the seaward limit of Pier construction as established in applicable law of the Commonwealth of Massachusetts.
40. "Private Tidelands" has the meaning ascribed in Chapter 91.
41. "Proposed Project" means the substantial demolition, erection, or extension of any structure or part thereof, or the change or extension of use of any structure or land (including submerged land and Tidelands), for which the Applicant is required to obtain a building or use permit. A Proposed Project may be built in phases and may include separate or connected building elements on the same Lot.
42. "Public Access Facility" means a facility for pedestrian access to and/or along the waterfront, as provided in clauses (a) and (b) of Subsection 42A-5.2 or of Subsection 42B-5.2, as the case may be.
43. "Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the Commonwealth of Massachusetts, or one or more political subdivisions of the Commonwealth, or of the United States. For the purposes of this article, the Commonwealth's proprietary interest in Tidelands shall not constitute "ownership" by a Public Agency.
44. "Public Boat Ramp" means any ramp structure that provides public access to or egress from the water for Vessels.

APPENDIX A to ARTICLE 42A (continued)

- 45. "Recreational Marina" means any arrangement of docks, slips, Piers, pilings, moorings, or other facilities in or adjacent to the water, for use primarily by Recreational Vessels, including, but not limited to, any such facility associated with a yacht club or boat club.
- 46. "Seasonal Dry Storage" means the storage of Recreational Vessels on land for periodic use in the water during the active boating season, generally from April through October.
- 47. "Sides" of a Pier means the edges of the Pier other than the edge connecting the Pier with dry land and other than the End of the Pier.
- 48. "Tidelands" means present and former submerged lands and tidal flats lying between the Natural High Tide Line and the seaward limit of state jurisdiction.
- 49. "Underlying Zoning" means all zoning regulations, with the exception of this article, which are contained in this code.
- 50. "Upper-Moderate Income Household" means any household whose Annual Income does not exceed 110% of the Median Gross Income of Households in the Boston Standard Metropolitan Statistical Area.
- 51. "Vessel" means any watercraft, including, but not limited to, a Commercial Vessel or Recreational Vessel, but not including any floating structure permanently moored or attached to land or a Pier.
- 52. "Vessel, Commercial" means any Vessel used for the principal purpose of engaging in a water-related commercial activity, including, but not limited to, charter boat, fishing boat, tug boat, cruise boat, freighter, or barge.
- 53. "Vessel, Recreational" means any Vessel used principally for recreational purposes.
- 54. "Water-Dependent Commercial Use" means a use described in Subsection 42D-3.1.
- 55. "Water-Dependent Use" means those uses described as such in Appendix B to this Article 42A.
- 56. "Water-Dependent Facility of Public Accommodation" means a Facility of Public Accommodation that is also a Water-Dependent Use.

APPENDIX A to ARTICLE 42A (continued)

57. "Waterfront Yard Area" has the meaning ascribed in Section 42A-7 or 42B-7 as the case may be.
58. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

APPENDIX B to ARTICLE 42A

Water-Dependent Uses and Facilities of Public Accommodation

Water-Dependent Uses

- Water-Dependent industrial uses;
- Facilities for fishing, swimming, diving, and other water-based recreational activities;
- Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;
- Aquariums and other cultural, educational, research, or training facilities dedicated primarily to marine purposes;
- Aquaculture facilities;
- Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;
- Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, water deflectors, and the like;
- Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;
- Marinas, boat basins, Boat Rental Establishments, boating or sailing school, channels, storage areas, and other facilities and establishments for commercial or recreational boating.

Facilities of Public Accommodation

A "Facility of Public Accommodation" means a facility, including a commercial facility, at which goods or services are made available directly to the general public. Facilities of Public Accommodation include, but are not limited to:

- Lunch room, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, provided that there is no dancing nor entertainment other than phonograph, radio, and television;
- Place for sale and consumption of food and beverages (other than drive-in restaurant) providing dancing or entertainment or both, provided that such establishment is customarily open to the public at large and does not exclude any minor by reason of age as a prevailing practice;
- Theater;
- Lobbies and public areas of a hotel or motel;
- Library, museum, aquarium, educational, historical, or cultural institution open to the public;

APPENDIX B to ARTICLE 42A (continued)

- Adult education center, community center, or other interior space dedicated to the programming of community meetings, informational displays, special recreational events, or other public activities;
- Store primarily serving the local retail business needs of the residents of the neighborhood, including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, drugs, tobacco products, clothing, dry goods, books, flowers, paint, hardware, and minor household appliances, but not including packaged alcoholic beverages;
- Department store, furniture store, general merchandise mart, or other store serving general retail business needs of a major part of the city, including accessory storage;
- Barber shop, beauty shop, shoe repair shop, self-service laundry, pick-up and delivery station of laundry or dry-cleaner, or similar use;
- Tailor shop or hand laundry;
- Caterer's establishment, photographer's studio, upholsterer's shop, carpenter's shop, or electrician's shop;
- Day care facility; and
- Sports or physical fitness facility open to the public;
- Interior facility for waterborne public transportation facilities, recreational marina, boat rental establishment, recreational sailing or boating school, or other recreational boating facility or establishment.

↓ARTICLE 42B

HARBORPARK DISTRICT

CHARLESTOWN WATERFRONT

(↓Article inserted on June 14, 1990*)

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*Date of public notice: May 19, 1990 (see St. 1956, c. 665, s. 5).

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(Editor’s Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 42B-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the Charlestown Waterfront within the Harborpark District as required by the provisions of the Harborpark Interim Planning Overlay District, Article 27C of this Code. Together with Article 42A, this Article establishes the Harborpark District. The goals and objectives of this Article and the Harborpark District Plan are to protect the Harborpark District from inappropriate land and water uses; to promote balanced growth along Boston's shoreline; to allow the waterfront to be used as a public resource and thereby to extend its use and benefit to the greatest number of people; to preserve and protect public open space and beach area within the harbor area; to promote public access to the waterfront; to promote residential and mixed-use commercial activities compatible with adjacent areas; to promote the economic growth and development of water-dependent and water-related commercial activity; to protect the working waterfront and preserve areas for water dependent uses; to promote public waterborne transportation; and to promote uses which integrate uses, activities, and physical connections between the harbor and its surrounding neighborhoods.

SECTION 42B-2. Recognition of the Harborpark District Plan. In accordance with Section 27C-16 of this Code, which required production of comprehensive planning policies, development controls, and design guidelines for the Harborpark District, the commission hereby recognizes the Harborpark District Plan as the general plan for the Charlestown Waterfront within the Harborpark District. The Harborpark District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Charlestown Waterfront within the Harborpark District. This Article is an integral part of and one of the means of implementing the Harborpark District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 42B-3. Physical Boundaries. The provisions of this Article are applicable only in the Charlestown Waterfront within the Harborpark District. The boundaries of the Charlestown Waterfront and its subdistricts are as shown on the maps "Map 2B Harborpark District: Charlestown Waterfront" and "Map 2C Harborpark District: Charlestown Waterfront (supplemental to 'Map 2 Charlestown')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 42B-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Charlestown Waterfront within the Harborpark District and applies to the use or occupancy of any structure or land (including submerged land and Tidelands) and the erection, reconstruction, extension, or alteration of any structure or part thereof as specified in Section 4-1 regarding the conformity of structures and land to this code. Exceptions to the provisions of this Article, pursuant to Article 6A, shall not be available except to the extent expressly provided in this Article or Article 6A. Application of the provisions of Article 27C to the Charlestown Waterfront within the Harborpark District is rescinded on the effective

date of this Article, except as provided below. For the Charlestown Gateway Subdistrict, except where specifically otherwise indicated in this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3) and Articles 14 through 24, inclusive, of this Code. For the entire Charlestown Waterfront within the Harborpark District where conflicts exist between the provisions of this Article, and the remainder of the Code, the provisions of this Article shall govern. The following Proposed Projects, however, are exempt from the provisions of this Article and are governed by the rest of this Code, including Article 27C:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

TIDELANDS REGULATIONS

↑SECTION 42B-5. **Chapter 91 Requirements.** In accordance with Chapter 91 of the General Laws of Massachusetts ("Chapter 91") and the regulations promulgated thereunder, certain Projects (as that term is defined below) located in Tidelands require a license ("Chapter 91 License") from the Commonwealth's Department of Environmental Protection ("DEP"). Section 18 of Chapter 91 requires that the planning board of a municipality in which a Project requiring a Chapter 91 license is located (i.e., the Boston Redevelopment Authority, in Boston) submit a written recommendation ("Section 18 Recommendation") stating whether the planning board believes the Project would serve a proper public purpose and would not be detrimental to the public's rights in Tidelands (the "Section 18 Standard"). Such a Section 18 Recommendation with respect to a Project requiring a Chapter 91 License and located in the Harborpark District shall be made by the Boston Redevelopment Authority in accordance with the provisions of Subsection 1 of this Section 42B-5. For the purposes of this Section 42B-5 only, the term "Project" shall mean a development, activity, or change of use requiring a Chapter 91 license.

1. Determination of Proper Public Purpose. The Boston Redevelopment Authority, in making a Section 18 Recommendation regarding a Project located in the Charlestown Waterfront within the Harborpark District, shall determine whether such Project serves a proper public purpose and would not be detrimental to the public's rights in Tidelands. The Boston Redevelopment Authority shall base such determination on the conformity of the Project to the provisions of Subsections 2 through 9 of this Section, and on the extent to which the Project reasonably and appropriately preserves and enhances the public's rights in Tidelands including, without limitation, the public's:
 - (a) visual access to the water, whether such Project is for a Water-Dependent or non-Water-Dependent Use on Private or Commonwealth Tidelands;
 - (b) rights to fishing, fowling, and navigation and the natural derivatives thereof, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Private or Commonwealth Tidelands;
 - (c) physical access to and along the water's edge for recreation, commerce, and other lawful purposes, and interest in public recreational opportunities at the water's edge and open space for public use and enjoyment, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Commonwealth Tidelands;
 - (d) interest in the preservation of the historic character of the Project's site;

- (e) interest in industrial and commercial waterborne transportation of goods and persons;
- (f) interest in repair and rehabilitation of dilapidated piers that blight the Harborpark District and limit public access; and
- (g) interest in safe and convenient navigation in Boston Harbor, including without limitation:
 - (i) navigation by water transportation Vessels, such as ferries, water taxis, water shuttles, or commuter vessels, including, without limitation, appropriate and convenient navigation by such Vessels outside of the Main Shipping Channel and other established channels;
 - (ii) navigation by deep draft Vessels, including without limitation, appropriate navigation in the Main Shipping Channel and other established channels and the requirements of turning, anchorage, and approaches to deep water piers and berths;
 - (iii) navigation by Recreational Vessels and small Commercial Vessels outside of the Main Shipping Channel and other established channels as necessary or convenient for such vessels to avoid interference with water transportation Vessels and deep draft shipping and as otherwise required for the purposes of harbor traffic management; and
 - (iv) navigation, as appropriate to the site, by U.S. Coast Guard, U.S. Naval, police, fire, and other public safety Vessels.

2. Public Access to the Waterfront and Open Space. Public access to the waterfront and Open Space is a central policy of the Harborpark District Plan. Pursuant to this policy, the Boston Redevelopment Authority shall not make a positive Section 18 Recommendation with respect to a Project that the Boston Redevelopment Authority determines will significantly interfere with public rights to walk or otherwise pass freely on Commonwealth Tidelands for purposes of commerce, recreation, and all other lawful activities; or on Private Tidelands for purposes of fishing, fowling, navigation, and the natural derivatives thereof. The Boston Redevelopment Authority shall find that the Section 18 Standard is not met if the Project does not comply with the following public access conditions:

- (a) To the extent that the Project site includes Flowed Private Tidelands, the Project shall allow continuous, on-foot, lateral passage by the public in the exercise of its rights therein, wherever feasible; any Pier,

wharf, groin, jetty, or other structure on such Tidelands shall be designed to minimize interference with public passage, either by maintaining at least a five-foot clearance above the ground along the high water mark, by providing a stairway for the public to pass laterally over such structures or by other means of lateral access substantially consistent with the foregoing; where obstruction of continuous access below the high water mark is unavoidable, the Project shall provide free lateral passage to the public above said mark in order to mitigate interference with the public's right to pass freely on Flowed Private Tidelands;

- (b) To the extent that the Project site includes Flowed or Filled Commonwealth Tidelands, or Filled Private Tidelands, the Project shall include reasonable measures to provide on-foot passage on such lands for the public in the exercise of its rights therein, in accordance with the following provisions:
 - (i) if the Project is not a Water-Dependent Use Project, said Project shall provide a public Pedestrian Access Network;
 - (ii) if the Project is a Water-Dependent Use Project, the Project shall provide for public passage by such means as are consistent with the need to avoid undue interference with the Water-Dependent Use or Uses in question and to avoid any safety hazard to people working on or visiting the Project site; measures which may be appropriate in this regard include, but are not limited to, allowing the public to pass laterally along portions of the Project shoreline, or transversely across the site to a point on the Project shoreline;
- (c) All Open Space areas established pursuant to Section 42B-6 located on Commonwealth Tidelands and all Public Access Facilities described in paragraphs (a) and (b) of this Subsection 2 shall be open and accessible to the public twenty-four (24) hours a day. No gates, fences, or barriers may be placed on said Public Access Facilities or Open Space in a manner that would impede or discourage the free flow of pedestrian movement thereon. The foregoing shall not be deemed to prohibit the placing of temporary barriers as required in emergencies or in connection with construction, maintenance, or the like, provided that interference with pedestrian access and passage is minimized to the extent reasonably practicable and consistent with public safety and that such barriers are in place no longer than necessary. All such pedestrian access facilities shall be Accessible to Physically Handicapped Persons as those terms are defined in Section 30-2. Active pedestrian use of

such Open Space areas and pedestrian access facilities shall be encouraged on a year-round basis, particularly for water-related activities, through such means as appropriate ground-level uses of adjacent buildings and facilities and amenities designed to be attractive to pedestrians. Maintaining, cleaning, landscaping, and managing such Open Space areas and pedestrian access facilities shall at all times be the responsibility of the Chapter 91 licensee of the Project. The Applicant for any Project subject to or electing to comply with Large Project Review shall include in the urban design component of its Draft Project Impact Report, submitted pursuant to Large Project Review, an Open Space and Public Access Plan, including plans, drawings, specifications, descriptions of proposed uses, and descriptions of proposed management measures and access-related rules and regulations, if any, sufficient to permit the Boston Redevelopment Authority to determine the conformity of the Project to this Subsection 2 and Section 42B-6, and to make a Section 18 Recommendation.

- (d) Any Project required to provide public access facilities in accordance with paragraph (b), above, shall encourage public patronage of such facilities by placing and maintaining adequate signage at all entryways and at other appropriate locations on the site; said signage shall:
 - (i) conform to Article 11, Signs, of the code;
 - (ii) conform, as applicable, to design guidelines for Harborwalk signage to be issued as regulations by the Boston Redevelopment Authority; and
 - (iii) include at least one sign, conforming to such design guidelines and placed in a prominent location, which advises the public of its access rights and discloses whatever access-related rules and regulations are in effect, if any.
- (e) Within any Maritime Economy Reserve Subdistrict, public access shall be required as set forth above, but only to the extent to which it does not significantly interfere with or obstruct the operation of a maritime-dependent industrial use or pose a safety hazard to workers or visitors on the site of such use.

- 3. Creation of Housing on Land not Owned by a Public Agency. In a Project to construct ten (10) or more units of housing in the Charlestown Waterfront within the Harborpark District on a Lot not owned by a Public Agency as of the date on which a Project Notification Form for the Project

is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least ten percent (10%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent that such ten-percent requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.2, and multiplying the result by the average per unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date.

4. Creation of Housing on Land Owned by a Public Agency. In a Project to construct four (4) or more units of housing on a Lot that is owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least twenty-five percent (25%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent such twenty-five percent (25%) requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by the Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.5, and multiplying the result by the average per unit assistance granted by the Neighborhood Housing Trust for the twelve months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date.
5. Construction of Affordable Housing Off Site. The following provisions shall govern the construction of Affordable dwelling units off site in satisfaction of the requirements of Subsections 3 and/or 4 of this Section:
 - (a) Subject to the approval of the Boston Redevelopment Authority, the Applicant may fulfill the obligations of Subsections 3 and/or 4 of this

Section by creating housing off site in the vicinity of the Project either within the Harborpark District or within the Charlestown neighborhood.

For the purposes of this Subsection 5 and the preceding Subsections 3 and 4, "housing" shall mean those uses otherwise allowed for the location and identified in Use Items nos. 1 through 8A of Table A of Section 8-7.

6. Provision for Water Transportation Facilities. To promote an effective water transportation system and to ensure use of the waterfront and full access to recreational, commuting, and economic activities, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met with respect to a Project located in the Charlestown Gateway Subdistrict unless the Project conforms to the requirements for water transportation facilities set forth below, as applicable:
 - (a) Water Transportation Facility Requirement. In making a Section 18 Recommendation with respect to such a Project, the Boston Redevelopment Authority shall consider the extent to which provision is made on the Project site for waterborne passenger transportation facilities, including, without limitation, terminals and landings for water ferries, water shuttles, or water taxis, and free public landings, as appropriate to the scale, use, and location of the Project and in accordance with the water transportation guidelines of the Harborpark District Plan.
 - (b) Shoreline Construction. In order to provide appropriate docking areas for emergencies and other harbor activities, all portions of the shoreline of a Project consisting of seawalls or bulkheads, but not including Piers, which are restructured and which abut waters accessible by Vessels shall be constructed, to the extent reasonably practicable, in such a manner as can accommodate such Vessels alongside for dockage.
7. Uses Allowed in Tidelands Proposed to be Filled and on Floating Structures. No portion of a Project located on Tidelands which are filled after the date of the first notice of hearing before the Zoning Commission on this Article shall be erected, used, or arranged or designed to be used (a) except for a Water-Dependent Use otherwise allowed or conditionally permitted for such Proposed Project, subject to the provisions of Article 6, or (b) as otherwise provided below. In making a Section 18 Recommendation with respect to a Project involving such new fill, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless such new fill is limited to the extent reasonably practicable by measures such as substituting pile-supported or floating structures for new fill or relocating the use to a position above the High Tide Line. The

foregoing shall not, however, prohibit or limit the use of new fill the purpose of which is to eliminate irregularities in or repair previously altered portions of the shoreline included in the Project, provided that such new fill replaces previously authorized fill elsewhere along such shoreline on a one-to-one square foot basis (new fill to removed fill). The foregoing shall also not prohibit or limit the use of new fill the purpose of which is to accommodate mechanical or structural elements of the Project that enter the seabed, such as, without limitation, elevator shafts, ventilation shafts, utility conduits, piles or the like, provided that such fill is limited to that reasonably required under the circumstances and provided, further, that all such mechanical elements, structural elements, and fill are wholly contained within the edges of a Pier. Piles are not considered "fill" for the purposes of this Article. New fill, in any event, is prohibited in any area where Pier construction or extension is prohibited by this Code.

No floating structure, other than a Vessel, shall be used or arranged or designed to be used except for a Water-Dependent Use otherwise allowed for the location of such structure or conditionally permitted, subject to the provisions of Article 6.

8. Regulations Governing Piers and Other Structures in the Charlestown Gateway Subdistrict. Within the Charlestown Gateway Subdistrict, no portion of any Pier shall extend beyond the Pierhead Line.
9. Regulations Governing Piers and Other Structures Elsewhere in the Charlestown Waterfront. In the Charlestown Waterfront within the Harborpark District, except in the Charlestown Gateway Subdistrict, no portion of any Pier, other than an Existing Pier, shall be erected, used, or arranged or designed to be used except as publicly accessible Open Space or for a Water-Dependent Use otherwise allowed or conditionally permitted, subject to the requirements of Article 6, for the location pursuant to this Article.

(↑ As amended on May 9, 1996.)

REGULATIONS APPLICABLE IN THE CHARLESTOWN WATERFRONT

SECTION 42B-6. Open Space Requirements. Any Proposed Project in the Charlestown Gateway Subdistrict involving new construction at grade, except a Proposed Project with a gross floor area of two thousand five hundred (2,500) square feet or less used exclusively for one or more Water Dependent Uses, shall devote to Open Space at least fifty percent (50%) of the Lot Area of such Proposed Project.

For the purposes of this Article, the term "Open Space" shall mean land areas and areas on Piers excluding (a) any area occupied by a building or roofed structure; (b) any parking lot or parking area; (c) any street; (d) any private road or area devoted to motor vehicle use; (e) any salt-water area below the mean high tide line, other than areas on Piers; (f) any fresh water area more than ten (10) feet from the shoreline; (g) marina slips or floats or other floating structures; (h) swimming pools; and (i) tennis courts.

The foregoing notwithstanding, the following areas shall be deemed "Open Space":

- (v) any area occupied by a building not exceeding a Building Height of fifteen (15) feet and a gross floor area of four hundred (400) square feet and reserved exclusively for use as a Water-Dependent Use or a recreational use permitted as a conditional use pursuant to Subsection 42B-14.4(a);
- (w) any area occupied by a street or private way open only to pedestrians and emergency vehicles;
- (x) any area at grade, pedestrian-accessible to members of the public twenty-four (24) hours per day, covered by a weather-protective enclosure or roof structure, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A. For purposes of this clause (x), Open Space shall not include any such area covered by a portion of a building, which portion is used or designed to be used for human occupancy or which contains or supports mechanical equipment principally serving portions of the building other than the enclosed Open Space area;
- (y) any area, at grade, otherwise meeting the definition of Open Space, as set forth in this Section, but covered by a pedestrian skywalk or skybridge, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A;

- (z) any area beneath an archway, which archway is not less than forty (40) feet wide at grade and forty (40) feet high at its apex and open at both ends.

All Open Space areas shall be Accessible to Physically Handicapped Persons, as those terms are defined in Section 30-2. The foregoing shall not prohibit occasional access to or over Open Space by service vehicles reasonably required to construct or maintain the structures on the Lot, or by vehicles required to service, load, or unload Commercial Vessels, or by emergency vehicles. However, routine access to or over Open Space areas by vehicles transporting, loading, or unloading passengers or supplies for the normal operation of buildings and uses, other than as set forth in the preceding sentence, is not consistent with the foregoing definition.

SECTION 42B-7. Waterfront Yard Area Requirements. Except as otherwise expressly provided in this Article, each Lot in the Charlestown Waterfront within the Harborpark District adjacent to or including the High Tide Line shall include a Waterfront Yard Area adjacent to and landward of such High Tide Line, excluding portions of the High Tide Line occupied by Piers. A Waterfront Yard Area shall also be required along the edges of any Pier. The required Waterfront Yard Area landward of the High Tide Line and the required Waterfront Yard Area on Piers shall be connected so as to provide a continuous path along the waterfront, with a minimum width at the places of connection of no less than twelve (12) feet. The dimensions of the required Waterfront Yard Area are set forth in Table A of this Article.

TABLE A

Required Depth of Waterfront Yard Area

<u>Location</u>	<u>Required Setback (Shoreline, excluding Piers)</u>	<u>Required Setback (Sides of Piers)</u>	<u>Required Setback (Ends of Piers)</u>
Charlestown Waterfront	35'	12'	35'

The provisions of Article 6A shall be applicable to the Waterfront Yard Area requirement. The following additional provisions shall apply to the Waterfront Yard Area requirement:

- 1. Waterfront Yard Area Measurements.** The depth of the Waterfront Yard Area shall be measured perpendicularly from the High Tide Line in the case of bulkheads, rip rap, fill, or shoreline and from the Ends and Sides of Piers. In locating the Waterfront Yard Area, the actual High Tide Line may

be smoothed with such curves and chords as may be necessary to achieve a reasonably regular landward boundary. However, in no instance shall the Waterfront Yard Area be narrower than the required dimension measured from the actual High Tide Line. For the limited purpose of applying the Waterfront Yard Area requirements of this Article, a filled area or a structure consisting of both fill and Pier, projecting seaward of the prevailing shoreline, and having the form of a wharf or Pier, shall be treated as Pier.

2. **Setback Requirements.** No portion of any building or structure (including, without limitation, mechanical facilities associated with a building) shall be located in any Waterfront Yard Area, except walkways, landscape furniture, guardrails, cleats, bollards, pilings, boat ramps, and other structures (a) which do not materially interfere with pedestrian use of the Waterfront Yard Area or (b) which are required for operational or safety reasons to be located at the water's edge, provided that any resulting interference with pedestrian use of the Waterfront Yard Area is minimized to the extent economically practicable.
3. **Exception to Waterfront Yard Area Setback Requirement.** Any building or structure used for a Water-Dependent Use, including without limitation, drydocks, enclosed or covered wet dock sheds, davits, hoists, mast markers, and the structures listed in Subsection 2 above, shall be permitted within the Waterfront Yard Area as necessary to avoid interference with any direct access to the water required for such Water-Dependent Use.
4. No portion of any Waterfront Yard Area shall be located on any floating structure.

↑**SECTION 42B-8. Urban Design Guidelines.** This Section 42B-8 establishes urban design guidelines for the portion of the Harborpark District governed by this Article.

1. New development and rehabilitation shall reinforce the traditional pattern, height, and massing of the urban waterfront.
2. Buildings and spaces shall direct views and pedestrian movements towards the water.
3. Buildings on Piers shall be sited so as to reinforce the geometry of the Pier; and buildings near the water's edge shall not be massed so as to create a continuous wall along the water's edge.
4. Inland buildings shall reinforce the city street pattern and avoid continuous walls parallel to the water's edge by maintaining view and access corridors, especially at cross-streets.

5. Buildings shall be sited to provide view and access corridors toward the open water and to preserve views from Public Access Facilities and Open Space areas at the Ends of Piers. Open archways spanning a view corridor, which archways are not less than forty (40) feet wide at grade and forty (40) feet high at the apex and are oriented and designed to preserve the view corridor, as determined through design review, shall not be deemed inconsistent with this design guideline.
6. Building elements on a site shall generally step down in height towards the water's edge.
7. Open areas and buildings at or near the Ends of Piers shall offer opportunities for public views of the water and public amenities that attract the public to the water's edge.
8. Building massing shall enhance the air flow channels created by sea breezes that are beneficial to air quality in the city.
9. Open spaces, building entrances, shopfronts, shop windows, shop entrances, terraces, gardens, arcades, and similar elements shall be designed to enhance pedestrian activity, access to, and enjoyment of the waterfront. Blank walls, without windows or entrances facing onto pedestrian areas, shall be avoided to the extent practicable in building designs.
10. Facade treatment, building materials, and design details shall complement the traditional character of Boston's historic waterfront development patterns.
11. Setbacks, corner treatments, and other design details shall be used to minimize the sense of bulk of structures, and ornamental and decorative elements appropriate to the urban and historical waterfront context are encouraged.
12. Roofs of buildings shall be designed to minimize the visibility of roof structures and penthouses normally built above the roof and not designed to be used for human occupancy.
13. A Proposed Project should promote and enhance the quality of the pedestrian environment, by means such as: (a) pedestrian pathways connecting to the waterfront and, where appropriate, linking the waterfront and mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) use of materials, landscaping, public art, signage, lighting, and furniture that enhance the pedestrian and waterfront environment; (d) pedestrian systems that encourage more trips on foot to

replace vehicular trips; (e) other attributes that improve the pedestrian environment and pedestrian access to the waterfront and Boston Harbor; and (f) appropriate management and maintenance of pedestrian access within the Proposed Project.

14. In addition to the foregoing, design features of a Proposed Project shall take into consideration the special characteristics of the site and its location in the Harborpark District and shall provide opportunities for special amenities, such as panoramic views of the Harbor, and shall enhance and reinforce any historic qualities of existing structures. New development shall be consistent with design guidelines established in the Harborpark District Plan.

(↑As amended on May 9, 1996.)

↓SECTION 42B-9. **Environmental Protection and Safety Standards for Proposed Projects.** Any Proposed Project involving new construction in the Charlestown Waterfront within the Harborpark District shall conform to the environmental protection and safety standards established in this Section, to the extent economically practicable, as determined in Large Project Review.

1. Trash Disposal Standards. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include a trash compactor in an interior location for garbage and trash disposal and shall provide for the maintenance and cleanliness of such compactor.
2. Area for Recyclable Materials. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include an interior area for the separation, temporary storage, and collection of recyclable materials. Such area shall be located in the vicinity of any off-street loading facility.
3. Provision of Safety Ladders. Any such Proposed Project, if adjacent to the water, shall provide a safety ladder or ladders extending from the water to an accessible area above the High Tide Line such that there shall be one safety ladder located approximately every one hundred (100) feet along those portions of the waterfront occupied by seawalls, piers, wharves, or other structures otherwise inaccessible to a person in the water. The foregoing notwithstanding, a safety ladder shall not be required in a location that would unreasonably interfere with docking facilities or other Water-Dependent Use, provided that safety ladders are placed at intervals most closely approximating one hundred (100) feet and not so interfering.

(↑As amended on May 9, 1996.)

↑SECTION 42B-10. **Off-Street Parking.** The provisions of Article 23, Off-Street Parking, shall govern any Proposed Project in the Charlestown Waterfront within the Harborpark District. The off-street parking requirements stated as applicable to a specific floor area ratio set forth in Table B of Section 13-1 shall also apply to the same floor area ratio set forth in this Article. Where a use provided for in this Article is not included in any use item number listed in Article 23, off-street parking facilities shall be provided in accordance with the requirements for the use item number listed in Article 23 which is most similar to such use.

1. Notwithstanding any contrary provision of Article 23, the following supplementary regulations shall be applicable in the Charlestown Waterfront:
 - (a) Off-street parking shall be provided for single family dwellings, two-family dwellings, and multifamily dwellings at a rate of not less than one (1) space per dwelling unit.
 - (b) Off-street parking shall be provided for a Recreational Marina at a rate of not less than one (1) off-street parking space for every eight (8) docking spaces.
 - (c) Off-street parking shall be provided for slips and docking spaces for Commercial Vessels as follows:
 - (i) For each slip or docking space for a Commercial Vessel which neither takes on nor discharges passengers at such slip or docking space, other than crew members, two (2) off-street parking spaces shall be provided.
 - (ii) For each slip or docking space for a Commercial Vessel which takes on or discharges passengers for sightseeing, exhibits, special events, dining, dancing, or other public assembly activity, off-street parking spaces shall be provided in accordance with Section 23-2.
 - (d) All off-street parking areas shall be located, designed, and maintained in accordance with Sections 23-8, 23-9, and 23-10. Subject to the provisions of Article 6, the Board of Appeal may approve a decrease up to fifty percent (50%) of the number of off-street parking spaces required by this Section, provided that: (a) the Applicant reserves a site area sufficient to accommodate the unsatisfied requirement for the possible future expansion or peak seasonal usage of said off-street parking spaces; (b) any permit granted pursuant to this Subsection shall be for a period not to exceed five (5) years and shall be renewable in accordance with the provisions of Article 6; and (c)

the Applicant provides for said area an environmentally suitable, permanent ground cover of pervious material. Such area shall not be used or built upon and shall be maintained as open space. However, such area may be developed for parking use in the future in accordance with the provisions of this section.

- (e) For any Proposed Project subject to Large Project Review and for which a Transportation Access Plan is required, the Boston Redevelopment Authority may determine that so-called "shared parking" arrangements, in which parking spaces may be counted for different uses whose peak parking use periods are not coincident, will adequately meet parking demand associated with such Proposed Project, in which event the number of parking spaces otherwise required shall be correspondingly reduced.
- (f) No Proposed Project shall be required to provide parking in excess of that permitted under any applicable state or federal parking freeze or similar law.
- (g) No parking shall be permitted in any Public Access Facility provided pursuant to the provisions of Section 42B-5.2.

(↑As amended on May 9, 1996.)

↑SECTION 42B-11. **Off-Street Loading.** Within the Charlestown Waterfront, no off-street loading facilities shall be required for any Proposed Project with a gross floor area of less than ten thousand (10,000) square feet. For any Proposed Project with a gross floor area of ten thousand (10,000) or more square feet, the Applicant shall include in its Project Impact Report, prepared for Large Project Review, an analysis of the loading requirements of the Proposed Project and of the impacts of projected loading activities, together with a description of any off-street loading facilities required to meet those requirements and to mitigate, to the extent economically practicable, projected impacts, and the Boston Redevelopment Authority shall determine the adequacy of such proposed loading facilities in accordance with Large Project Review.

(↑As amended on May 9, 1996.)

↑SECTION 42B-12. **Charlestown Gateway Subdistrict.** This Section establishes the Charlestown Gateway Subdistrict, as depicted on Map 2C of this Code. The Charlestown Gateway Subdistrict includes the Tudor Wharf Area and the Hoosac Pier/Constitution Road Area, as depicted on said Map 2C. Within the Tudor Wharf Area, the maximum allowed FAR is three (3). The maximum allowed Building Height is seventy-five (75) feet landward of the High Tide Line and fifty-five (55) feet on Piers. Within the Hoosac Pier/Constitution Road Area the maximum allowed FAR is two (2) and the maximum allowed Building Height is fifty-five (55) feet. Review and

analysis of a Proposed Project located in the Charlestown Gateway Subdistrict and subject to Large Project Review shall include review and analysis of the extent to which the building siting and massing of the Proposed Project take account of significant views of historic landmarks and topographic features as seen from the water and preserve and enhance such views to the extent reasonably practicable.

(↑As amended on May 9, 1996.)

SECTION 42B-13. Rooftop Additions. No roof structure designed or used for human occupancy, access, or storage, and no roof structure, headhouse, or mechanical equipment normally built above the roof and not designed or used for human occupancy, shall be erected or enlarged on the roof of an existing building within the Charlestown Gateway Subdistrict unless after public notice and hearing and subject to Sections 6-2, 6-3, and 6-4 the Board of Appeal grants permission therefor. In reaching its decision, said Board shall consider whether such roof structure is architecturally consistent with the distinctive historical and architectural character of the area. The Inspectional Services Department shall transmit a copy of the appeal for the conditional use to the Boston Landmarks Commission. The Boston Landmarks Commission may, within thirty days after the date of such transmittal, file with the Board of Appeal a recommendation, provided that if no such recommendation is received within said thirty days, the Board of Appeal may render its decision without such recommendation.

↑**SECTION 42B-14. Use Regulations Applicable in the Charlestown Gateway Subdistrict.** No land (including Tidelands and submerged land) water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, within the Charlestown Gateway Subdistrict, except in conformity with the provisions of this Section and Section 8-6.

1. **Inclusion of Day Care Facilities.** The provisions of this Subsection 1 apply only to Proposed Projects in the Charlestown Gateway Subdistrict that exceed a building height of fifty-five (55) feet, an FAR of two (2), or both. Any such Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, Hotel Uses, or Cultural Uses, which equals or exceeds one hundred thousand (100,000) square feet, shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table B of this Section; provided that any Proposed Project within a Building Height of less than seventy-five (75) feet or an FAR of less than three (3) shall not be required to devote to day care facilities an amount of floor area exceeding (a) one-half percent (0.5%) times (b) the excess of (i) the gross floor area of said Proposed Project over (ii) one hundred thousand (100,000) square feet. An Applicant for a Proposed Project subject to the provisions of this Subsection 1 may fulfill its obligations under this paragraph by either (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created,

in the vicinity of the Proposed Project within the Charlestown Waterfront or Charlestown neighborhood; provided that any Proposed Project subject to the provisions of this Section, other than a Proposed Project with a Building Height of seventy-five (75) feet or less and/or an FAR of three (3) or less, shall devote to day care facilities located on site an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this Subsection 1 shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours. Such day care facilities provided as part of a Proposed Project shall not be included in the calculation of FAR.

TABLE B

Provision of Day Care Facilities

<u>Size of Proposed Project*</u> <u>(Gross Floor Area)</u>	<u>Minimum Day Care Facilities</u> <u>(Gross Floor Area)</u>
100,000 up to 200,000 sq.ft.	2% of gross floor area
200,000 up to 500,000 sq.ft.	4,000 sq.ft.
500,000 up to 1,000,000 sq.ft.	8,000 sq.ft.
More than 1,000,000 sq.ft.	12,000 sq.ft.

* Excluding floor area devoted to Residential, Hotel, or Cultural Uses.

2. Facilities of Public Accommodation. Within any Proposed Project in the Charlestown Gateway Subdistrict with a gross floor area of ten thousand (10,000) or more square feet, involving new construction or a change of use on the first story, the use of at least forty percent (40%) of the gross floor area of the first story of such Proposed Project shall be for indoor Facilities of Public Accommodation otherwise allowed for such Proposed Project or conditional and permitted pursuant to Article 6.
3. Allowed Uses. Within the Charlestown Gateway Subdistrict, except as otherwise provided in this Section 42B-14, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except in accordance with the provisions of this Subsection 3 and Subsection 4 of this Section 42B-14. Any use specified in this Subsection 3 is allowed as a

matter of right, subject only to the requirements set forth in the description of such use below:

(a) Water-Dependent and Water-Related Uses.

(i) Water-Dependent Uses.

Dock, slip, pier, wharf, anchorage, or moorage for Commercial Vessels and Recreational Vessels awaiting servicing, provisions, on or off loading of people or cargo at delivery;
Water-dependent recreational facility, Recreational Marina, facilities for the use, hire or charter of Commercial Vessels, Boat Rental Establishment, recreational sailing or boating school, yacht club;
Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;
Aquarium, including uses reasonably appurtenant thereto such as gift shop, laboratory space, classrooms, restaurant, and floor service uses, office space, conference facilities, meeting rooms;
Other cultural, educational, research, or training facilities dedicated primarily to marine purposes;
Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;
Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;
Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, wave deflectors, and the like.

(ii) Water-Related Uses.

Installation, repair, or servicing of boating accessories, marine equipment, marine instruments, or marine motors;
Chandlery, woodworking shop, electrical shop, or similar use for the repair and maintenance of Vessels;
Sale of marine hardware, or boating or diving supplies and equipment.

(b) Open Space Recreational Uses

Open space for active or passive recreational use or dedicated to the conservation of natural resources, including but not limited to the waterways areas, beaches, reservations, parks, and playgrounds; nonprofit sailing center or other public recreational facility operated by a nonprofit organization.

(c) Community Uses and Cultural Facilities

Library, museum, gallery, concert hall, legitimate theater, auditorium, performance space, aquarium, or historical exhibit open to public generally;

Community center or community service facility;
Day care center.

(d) Residential Uses

Building or group of buildings for occupancy by three (3) or more families in separate dwelling units;

Group residence, limited, as defined in clause (22B) of Section 2-1;
Convalescent, nursing, or rest home.

(e) Hotel Uses

Hotel, conference and meeting facilities, restaurant, lounge, bar, store primarily serving the retail needs of hotel, conference, and meeting guests, health club, swimming pool, parking garage, storage and office use accessory to hotel use.

(f) Office Uses

Office of professional persons, not accessory to a main use;

Real estate, insurance, financial service institution, or other agency or government office;

Office or display or sales space of a wholesale, jobbing, or distributing house, provided that the office or display or sales space of the wholesale, jobbing, or distributing house is associated with a Water-Dependent Use;

Office building, post office, bank (other than drive-in bank) or similar establishments.

(g) Research Center Uses

Laboratories and facilities for teaching and for theoretical, basic, and applied research, product development and testing, prototype fabrication, or production of experimental products; the keeping of marine life or laboratory animals incidental to a research or development use; storage and office use accessory to a research or development use; parking garage, day care center.

Design, development, manufacture, compounding, packaging, processing, fabrication, altering, assembly, repair, servicing, renting, testing, handling, or transfer of products as would be included in Research and Development Uses, consistent with the provisions of Subsection 36-4.1; parking garage, day care center, storage and office use, accessory to a Research Center Use.

(h) Local Retail/Service Uses

Store primarily serving the local retail business or service needs of the neighborhood and harbor/waterfront users, including but not limited to chandlery, barber shop, beauty shop, shoe repair shop, self-service laundry, pick-up and delivery station of laundry or drycleaner, tailor shop, hand laundry;

Store retailing one or more of the following but not limited to: food, baked goods, groceries, drugs, tobacco products, clothing, drygoods, books, film, video, art, flowers, paint, hardware, and small household appliances.

(i) General Retail Uses

Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage, provided that any Proposed Project for a general retail use shall be conditional if it: (a) establishes an occupancy for a general retail use having a gross floor area of seventy-five thousand (75,000) or more square feet; or (b) changes to a general retail use the use of a gross floor area of seventy-five thousand (75,000) or more square feet; or (c) enlarges a general retail use so as to result in a total gross floor area of seventy-five thousand (75,000) or more square feet.

(j) Restaurant Uses

Lunchroom, restaurant, cafeteria, or other place for the service or sale of food or drink for on-premises consumption, including outdoor cafes;

Place for sale and consumption of food and beverages (other than drive-in restaurants) providing dancing or entertainment or both;

Pushcart food vendors.

(k) Educational Uses

Marine research and/or training institute for educational institution provided that water access is required for the facility or its operation.

(l) Public Service Uses (subject to St. 1956, Chapter 665, Section 2)

Public service pumping station, public service substation, automatic telephone exchange, fire station, police station;

Flood, water level, or tidal control facility;

Cable conduit, pipeline crossing, stormwater outlet, or other similar utility structure.

(m) Transportation Uses

Public transportation facility, bus station, trolley station.

(n) Parking Uses

Parking garage or parking lot.

(o) Accessory and Ancillary Uses

Any of the following uses accessory or ancillary to an allowed use, subject to the limitations and restrictions of Article 10:

(i) any use accessory or ancillary to, and ordinarily incident to, a lawful main use; provided that such use is not specifically forbidden in the district; and provided further that any such use shall be subject to the same restrictions, conditions, limitations, provisos and safeguards as the use to which it is accessory.

(ii) an office, within a main building, of an accountant, architect, attorney, dentist, physician, or other professional person who resides in such building.

- (iii) an occupation for profit customarily carried on in a dwelling unit by a person residing therein provided that such occupation is carried on in a main building and requires only equipment ordinarily incident to a dwelling unit and that no non resident help is employed and that there is no trading in merchandise.
- (iv) the keeping of laboratory animals incidental to a lawful educational, research center, aquarium, or institutional use.
- (v) as accessory uses to hotel uses, restaurants, conference facilities, retail and service establishments serving guests and visitors and other uses incidental to the operation of a hotel;
- (vi) as accessory uses to research center uses, restaurant, office, and other uses incidental to the operation of such research center uses;
- (vii) the storage of flammable liquids and gases incidental to a lawful use.
- (viii) permanent dwellings for personnel required to be resident on a Lot for the safe and proper operation of a lawful main use.
- (ix) day care center.
- (x) health club facility, tennis court, swimming pool.

4. Conditional Uses. Within the Charlestown Gateway Subdistrict, except as otherwise provided in this Section 42B-14, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6, unless such use is specified in this Subsection 4.

(a) Open Space Recreational Uses

Recreational building (other than a nonprofit sailing center or other public recreational facility operated by a nonprofit organization) on an Open Space area that is necessary and/or appropriate to the enhanced enjoyment of the particular Open Space area and is open to the public.

(b) Take-out Restaurant

In a structure, sale over the counter, not wholly incidental to a local retail business or restaurant use, of food or drink prepared on

premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.

5. Forbidden Uses. Any use not specified as an allowed or conditional use in this Section 42B-14, except for such nonconforming uses as may be allowed to continue under the provisions of Article 9, shall be forbidden uses in the Charlestown Gateway Subdistrict. Without limitation, uses described in Use Items No. 34A and No. 38A of Table A of Section 8-7 shall be forbidden uses in the Charlestown Gateway Subdistrict. In addition, and notwithstanding any contrary provision hereof, any use of a floating structure, other than for a Water-Dependent Use, is forbidden in the Charlestown Gateway Subdistrict.

(↑As amended on February 22, 1991, September 30, 1993, October 6 and December 19, 1994, November 21, 1996, and _____, 1997.)

SECTION 42B-15. Working Waterfront Subdistricts. This Section establishes five (5) working waterfront subdistricts within the Charlestown Waterfront. The working waterfront subdistricts are established in order to maintain, foster, and promote the maritime economy within the city of Boston; to provide for light manufacturing Water-Dependent Uses; to preserve sites for maritime-dependent industrial uses along the waterfront consistent with applicable state policy and the needs of the maritime industry; to create opportunities for manufacturing and business on the waterfront; to promote land development that will protect the public health and general welfare; and to maintain a safe and healthy environment.

1. Charlestown Maritime Economy Reserve Subdistrict. Within that portion of the Charlestown Waterfront depicted on Maps 2B and 2C of this Code as the "Charlestown Maritime Economy Reserve Subdistrict," a maximum Building Height of fifty-five (55) feet (except for cranes, silos, storage facilities or other mechanical devices or facilities used for transfer of goods from land to waterborne vessels or for processing of such goods) and a maximum FAR of two (2) are allowed, and the regulations of this Code for MER-2-55 subdistricts are applicable.
2. Mystic River Waterfront Manufacturing Subdistrict. Within that portion of the Charlestown Waterfront depicted on Map 2B of this Code as the "Mystic River Waterfront Manufacturing Subdistrict," a maximum Building Height of fifty-five (55) feet (except for cranes or other mechanical devices required for operation of the allowed use) and a maximum FAR of two (2) are allowed, and the regulations of this Code for WM-2-55 subdistricts are applicable.
3. Terminal Street Waterfront Manufacturing Subdistrict. Within that portion of the Charlestown Waterfront depicted on Maps 2B and 2C of this Code as

the "Terminal Street Waterfront Manufacturing Subdistrict," a maximum Building Height of fifty-five (55) feet (except for cranes or other mechanical devices required for operation of the allowed use) and a maximum FAR of two (2) are allowed, and the regulations of this Code for WM-2-55 subdistricts are applicable, except that notwithstanding any contrary provision of Subsection 42D-3.2(d), office uses described in said Subsection shall be allowed uses above the first floor, without a percentage limit on gross floor area, within any building existing as of the effective date of this Article.

4. Charlestown General Industrial Subdistrict. Within that portion of the Charlestown Waterfront depicted on Map 2B of this Code as the "Charlestown General Industrial Subdistrict," a maximum Building Height of sixty-five (65) feet and a maximum FAR of two (2) is allowed and the regulations of this Code for I-2-65 subdistricts are applicable.
5. Little Mystic Waterfront Service Subdistrict. Within that portion of the Charlestown Waterfront depicted on Maps 2B and 2C of this Code as the "Little Mystic Waterfront Service Subdistrict," a maximum Building Height of forty-five (45) feet and a maximum FAR of one (1) are allowed, and the regulations of this Code for WS-1-45 subdistricts are applicable. Notwithstanding any contrary provision of Article 42C, Waterfront Service Districts, within the Little Mystic Waterfront Service Subdistrict parking is allowed provided that it is located a minimum of twenty (20) feet from the High Tide Line, with a minimum of twelve (12) feet adjacent to and landward of the High Tide Line devoted to Public Access Facilities and a minimum of eight (8) feet devoted to vegetative buffering.

SECTION 42B-16. Waterfront Residential Subdistrict. This Section establishes one waterfront residential subdistrict. The waterfront residential subdistrict is established in order to provide for residential uses on the waterfront.

1. Little Mystic Waterfront Residential Subdistrict. Within that portion of the Charlestown Waterfront depicted on Maps 2B and 2C of this Code as the "Little Mystic Waterfront Residential Subdistrict," a maximum Building Height of forty-five (45) feet and a maximum FAR of one (1) are allowed, and the regulations of this Code for H-1-45 subdistricts are applicable.

SECTION 42B-17. Open Space Subdistricts. This section establishes five open space subdistricts within the Charlestown Waterfront, which subdistricts are identified in Table C of this Article and shown on Maps 2B and 2C of this Code. Any Lot within any such open space subdistrict is subject to Article 33, Open Space Subdistricts, and other provisions of this Code applicable to such subdistrict.

TABLE C

Open Space Subdistricts in the Charlestown Waterfront

<u>Name</u>	<u>Designation</u>
J.J. Ryan Playground	Recreation (OS-RC)*
Little Mystic Waterfront Access	Waterfront Access (OS-WA) **
William J. Barry Playground	Recreation (OS-RC)*
Paul Revere Landing	Parkland (OS-P)***

* Recreation Open Space Subdistricts consist of land appropriate for and limited to active or passive recreational uses. See Section 33-10.

** Waterfront Access Open Space Subdistricts consist of land which abuts or lies under waters of the Commonwealth within the jurisdiction of the City. See Section 33-13.

*** Parkland Open Space Subdistricts consist of land appropriate for and limited to passive recreational uses. See Section 33-9.

MISCELLANEOUS PROVISIONS

SECTION 42B-18. **Regulations.** The Boston Redevelopment Authority may promulgate regulations to administer this Article.

SECTION 42B-19. **Rights to Navigation.** No provision of this Code shall be construed as a limitation upon the navigational rights of vessels or upon the regulation thereof by the United States.

SECTION 42B-20. **Severability.** The provisions and requirements of this Article are severable, and if any such requirements or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision or requirement of this Article.

SECTION 42B-21. **Definitions.** Words and phrases defined in Appendix A to Article 42A, when capitalized in this Article, have the meanings set forth in said Appendix A.

↑ARTICLE 42C

WATERFRONT SERVICE DISTRICT

(↑Article inserted on April 27, 1990*)

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

*Date of public notice: March 17, 1990 (see St. 1956, c. 665, s. 5).

SECTION 42C-1. Statement of Purpose. The purposes of this Article are to preserve for water-dependent commercial use adequate Piers, docks, and land necessary for the repair, maintenance, and sale of Commercial and Recreational Vessels; to provide appropriate areas for the sale of marine fuel and boating supplies; to protect against the encroachment of uses that threaten the continued economic viability of these specialized operations in Boston; to designate sites along the waterfront for other water-dependent commercial uses such as tug boats and lobster boats, consistent with applicable State policy and the unique needs of these uses for waterfront property; to support through such uses the maritime-dependent industrial use of the Boston Harbor; to promote land development that protects the public health and general welfare; and to maintain a safe and healthy environment.

SECTION 42C-2. Applicability. Within a Waterfront Service District, no building or structure may be erected, reconstructed, extended, or altered, and no building, structure, land (including submerged land and Tidelands) or water area may be used or occupied, except as provided in this Article. A Waterfront Service District may be indicated by the abbreviation "WS" on any official zoning map of the City of Boston.

The provisions of this Article and the remainder of the Code constitute the zoning regulations in a Waterfront Service District. Where conflicts exist between a provision of this Article and the remainder of the Code, the provision of this Article shall govern, unless this Article specifically indicates otherwise.

↑**SECTION 42C-3. Waterfront Service District Use Regulations.** Within a Waterfront Services District, no land (including submerged land or Tidelands), water area, or structure may be erected, used, or arranged or designed to be used except as provided in this Section. The provisions of Article 8 apply only as specified in this Section, except that Section 8-6 applies.

1. Allowed Uses. Within a Waterfront Service District (land and Tidelands), the following uses ("Water-Dependent Commercial Uses") shall be allowed as a matter of right, subject only to the regulations set forth in this Article:
 - a. Dock, slip, pier, wharf, anchorage, or moorage for Commercial Vessels or Recreational Vessels awaiting servicing, provisioning, off-loading, or delivery;
 - b. Use, hire, or charter of any Commercial Vessel;
 - c. Boat and marine motor service and repair or sales and display; boatyard; boat broker; or marine insurance broker;
 - d. Non-Seasonal Dry Storage of Vessels;

- e. Sale of marine fuel, marine hardware, or boating or diving supplies and equipment;
- f. Navigation aids and facilities;
- g. Wet or dry storage or berthing of any Commercial Vessel, including, but not limited to, fishing vessel, tow boat, or cruise boat;
- h. Installation, repair, or servicing of boating accessories, marine equipment, marine instruments, or marine motors;
- i. Woodworking or carpentry shop;
- j. Marine shop, electrical shop, or similar use for the repair and maintenance of Vessels not exceeding one hundred fifty (150) feet in length;
- k. Hoist, lift, ramp, davit, or other structure to haul or move a Commercial Vessel or Recreational Vessel not exceeding one hundred fifty (150) feet in length from water to land or vice versa and not used by the public generally;
- l. Groin, breakwater, wave deflector, or other structure that protects an area used for dockage or moorage;
- m. Aquaculture facility;
- n. Boat Rental Establishment;
- o. Facility necessary for public health, safety, management, or law enforcement on waterways;
- p. Flood, water level, or tidal control facility;
- q. Cable, conduit, pipeline crossing, stormwater outlet, or other similar utility structure;
- r. Marine research and training institute;
- s. Open Space, pedestrian walkway, water-dependent recreational facility, or other public outdoor recreation facility;
- t. Terminal, parking area, or other facility necessary for waterborne passenger transportation; provided that the number of vehicular parking spaces does not exceed fifty (50) spaces;

- u. Public Boat Ramp;
 - v. Any of the following uses accessory to an allowed use, subject to the limitations and restrictions of Article 10:
 - (i) A parking garage or parking lot for occupants, employees, customers, students, and visitors; provided that, in the case of a lot lying in two or more districts, such parking is accessory to a use that is lawful in the district in which such parking is located;
 - (ii) storage of flammable liquids and gases incidental to a lawful use;
 - (iii) any use ancillary to, and ordinarily incident to, a lawful main use; provided that such use is not a use specifically forbidden in such district; and provided further that any such use shall be subject to the same restrictions, conditions, limitations, provisos and safeguards as the use to which it is accessory;
 - w. Recreational Marina, rack, dry stack, or landside facility for Seasonal Dry Storage of Private Pleasure Craft Vessels; provided that the number of slips and spaces associated with any such facility does not exceed twenty. For the purposes of this subparagraph, any slip or space existing on the effective date of this Article shall not be included in the calculation of the number of slips and spaces under this subparagraph.
2. Conditional Uses. Except as otherwise provided in this Section 42C-3, no land (including submerged land and Tidelands), water area, or structure in a Waterfront Service District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Subsection 2. The granting of a permit for any use so specified may be authorized by the Board of Appeal acting under the provisions of Article 6, subject to the requirements set forth in this Subsection 2.
- a. Private club, provided that water access is required for the club's program or operations;
 - b. Recreational Marina, or rack, dry stack, or landside facility for Seasonal Dry Storage of Private Pleasure Craft Vessels if the number of slips and spaces associated with such facility exceeds twenty. For the purposes of this subparagraph, any slip or space existing on the effective date of this Article shall not be included in the calculation of the number of slips and spaces under this subparagraph;

- c. Any use not listed in Subsection 1 of this Section 42C-3 that is allowed in a Residential (S, R, H) or Local Business (L) district provided that:
 - (i) no more than twenty-five percent (25%) of the allowed gross floor area of all structures constructed on a Lot subsequent to the effective date of this Article shall be devoted to such use; in any event, no Residential Uses shall be permitted on any Lot adjacent to a Maritime Economy Reserve District or to a subdistrict governed by the regulations applicable to such a district;
 - (ii) lot coverage by any such use does not exceed thirty-five percent (35%) of the total Lot Area; and
 - (iii) adequate distance, screening, and buffering are provided between uses that are potentially incompatible, as determined by the Board of Appeal, in accordance with Section 6-4;
 - d. Terminal, parking area, or other facility necessary for waterborne passenger transportation, if the number of vehicular parking spaces is greater than fifty (50) spaces.
3. Forbidden Uses. Any use not otherwise specified in this Section as an allowed or conditional use shall be a forbidden use, except for such nonconforming uses as may be allowed to be continued under the provisions of Article 9. Without limitation, uses described in Use Items 34A and 38A of Table A of Section 8-7 shall be forbidden uses in a Waterfront Service District. In addition, and notwithstanding any contrary provision hereof, any use of a floating structure, other than for a Water-Dependent Use, is forbidden in a Waterfront Service District.

(↑ As amended on September 30, 1993 and October 6 and November 21, 1996.)

SECTION 42C-5. Dimensional Regulations. Within a Waterfront Service District the following dimensional requirements apply to all buildings, structures, and uses, other than a Residential Use, and except as otherwise provided in Section 42C-3:

- 1. Minimum Lot Size: none.
- 2. Minimum Lot Width: none.
- 3. Maximum Floor Area Ratio: within a WS-1 subdistrict: 1.0
within a WS-2 subdistrict: 2.0

- | | | |
|----|--|--|
| 4. | Maximum Height: | within a WS-1 subdistrict: 35 feet
within a WS-2 subdistrict: 35 feet |
| 5. | Minimum Front Yard: | none. |
| 6. | Minimum Rear Yard: | 12 feet. |
| 7. | Minimum Side Yard: | none. |
| 8. | Maximum Percentage of
Rear Yard which may be
Occupied by Accessory
Buildings: | none. |

Any Residential Use in a Waterfront Service District shall conform to the dimensional requirements applicable to the nearest Residential District.

SECTION 42C-6. **Regulations.** The Boston Redevelopment Authority may promulgate regulations to administer this Article.

SECTION 42C-7. **Severability.** The provisions of this Article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.

SECTION 42C-8. **Definitions.** Words and phrases defined in Appendix A to Article 42A, when capitalized in this Article 42C, have the meanings set forth in said Appendix A, except that for the purposes of this Article 42C only:

1. "Residential District" means an S, R, or H district or a subdistrict subject to the regulations governing an S, R, or H district.
2. "Residential Uses" means uses described in Use Items 1 through 8A of Table A of Section 8-7.

↓ARTICLE 42D

WATERFRONT MANUFACTURING DISTRICT

(↓Article inserted on April 27, 1990*)

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

*Date of public notice: March 17, 1990 (see St. 1956, c. 665, s. 5).

SECTION 42D-1. **Statement of Purpose.** The purposes of this Article are to protect the working waterfront and preserve areas for manufacturing uses and waterfront service uses; to support maritime industrial uses through promotion of related manufacturing uses; to protect against the encroachment of uses that threaten the continued economic viability of these specialized operations; to promote uses which integrate activities, uses, and physical connections between the harbor and its surrounding neighborhoods; and to maintain a safe and healthy environment.

SECTION 42D-2. **Applicability.** Within a Waterfront Manufacturing District, no building or structure may be erected, reconstructed, extended, or altered, and no building, structure, land (including submerged land and Tidelands) or water area may be used or occupied, except as provided in this Article. A Waterfront Manufacturing District may be indicated by the abbreviation "WM" on any official zoning map of the City of Boston. The provisions of this Article and the remainder of the Code constitute the zoning regulations in a Waterfront Manufacturing District. Where a conflict exists between a provision of this Article and the remainder of the Code, the provision of this Article shall govern, unless this Article specifically indicates otherwise.

↓SECTION 42D-3. **Waterfront Manufacturing District Use Regulations.** No land (including submerged land and Tidelands), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, except in conformity with the provisions of this section and Section 42D-4 regarding performance standards for all uses. The provisions of Article 8 apply only as specified in this section, except that Section 8-6 applies.

1. Allowed Uses. Within a Waterfront Manufacturing District, any use specified in this Subsection 1 shall be allowed as a matter of right, subject only to the regulations set forth in this Article.

a. Manufacturing Uses. Any of the following uses, provided that no portion of such use is located within fifty (50) feet of a Residential District and provided such use meets the performance standards set forth in Section 42D-4; otherwise conditional;

Laundry plant, dry cleaning plant, rug cleaning plant.
Bottling works for beverages.
Cotton ginning.

Manufacture or repair of:

Advertising displays.

Apparel or other products (including hat bodies and like)
from textiles or similar materials.

Beverages containing less than 0.5% of alcohol by volume
at 60 degrees F.

Boats less than one hundred and fifty (150) feet long.

Brooms or brushes.
Cameras or other photographic equipment, except flammable film.
Carpets.
Canvas or canvas products.
Ceramic products, including pottery, small glazed tile, and the like.
Cosmetics or toiletries.
Cotton wadding or lintens.
Electric lamp bulbs.
Electric lighting fixtures, electric irons, electric fans, electric toasters, electric toys, or similar electric appliances.
Electric wiring supplies, dry cell batteries, and the like.
Electronic components and supplies.
Food products (exclusive of curing, smoking, or drying of meat or fish).
Fur goods (exclusive of curing, dyeing, and tanning).
Gases in amounts not exceeding two thousand cubic feet a day.
Glass products from previously manufactured glass.
Hair, felt, or feather products (exclusive of curing, dyeing, and washing).
Hosiery.
Ice (dry or natural).
Ink or inked ribbon.
Leather products, including shoes, machine belting, and the like.
Luggage.
Mattresses (including rebuilding and renovating).
Metal furniture, cabinets, doors, fencing, and the like.
Metal products made by stamping or extrusion, including costume jewelry, pins and needles, razor blades, bottle caps, buttons, kitchen utensils, and the like.
Musical instruments, including pianos and organs.
Novelty products.
Optical equipment, clocks, or similar precision instruments.
Orthopedic or medical appliances, including artificial limbs, braces, supports, stretchers, and similar appliances.
Paper products, including envelopes, stationery, bags, boxes, shipping containers, wallpaper printing, and similar products.
Pharmaceutical products.
Plastic products, including tableware, phonograph records, buttons, and the like (exclusive of plastic processing).

Recycling of metal, plastic, wood, paper, cloth, glass, or similar nonhazardous materials (exclusive of processing), including storage of such materials in roofed enclosures, provided that outdoor storage shall be conditional.

Rubber products (exclusive of rubber and synthetic processing), including washers, gloves, footwear, bathing caps, atomizers, and the like.

Silverware (plate or sterling).

Sporting goods or athletic equipment, including balls, baskets, cues, gloves, bats, racquets, rods and the like.

Statuary, mannequins, figurines, or religious or church art goods, exclusive of foundry operations.

Textiles, knit goods, yard goods, thread or cordage, including spinning, weaving, dyeing, and printing.

Tools or hardware, including hand tools, electrical tools, household hardware, locks, nonferrous metal castings, plumbing appliances, and the like.

Toys or vehicles for children, including baby carriages, scooters, wagons, bicycles, and the like.

Wood products, including furniture, boxes, and the like.

Packaging chemicals, detergents, or soap (exclusive of processing).

Printing or newspaper publishing, including engraving or photoengraving.

Stone cutting or lettering.

Storage of gases in amounts not exceeding ten thousand cubic feet.

Upholstering.

Any similar manufacturing use, unless specified in this Section as conditional or forbidden.

- b. Maritime-Dependent Facilities. The following uses are allowed provided the use is not within fifty (50) feet of a Residential District.

Facilities associated with marine terminals for the storage of goods transported in waterborne commerce;

Manufacturing facilities relying on the bulk receipt of shipments of goods by waterborne commerce;

Wharves, piers, docks, and storage facilities for the commercial fishing industry;

Dry docks and other facilities related to the construction, servicing, storage, maintenance, or repair of vessels and other marine structures; and

Other docks, piers, wharves, berths, dolphins, or mooring facilities for tow boats, barges, dredges, ferries, commuter boats, water buses, water taxis, or other vessels engaged in waterborne commerce, port operations, or marine construction.

- c. Waterfront Service Uses. Any use that is allowed in a Waterfront Service District pursuant to Article 42C.
- d. Transportation Uses. Waterfreight or passenger terminal facility, including docks, piers, wharves, storage sheds used in whole or in part for waterborne commodities, and rail and truck facilities servicing or related to a waterborne freight terminal, provided the use is not within fifty (50) feet of a Residential District.
- e. Wholesale Business and Storage. Warehouse; wholesale business, including accessory storage (other than of flammable liquids, gases and explosives) in roofed structures; outdoor storage of: new building materials, contractor's equipment, machinery, metals (other than scrap and junk), and the like; enclosed storage or wholesaling of fish and seafoods, provided the use is not within fifty (50) feet of a Residential District.
- f. Scientific Research and Development Uses. Basic research; research and development; product development or prototype manufacturing; biomedical technology; pharmaceutical research and development; research and medical laboratories.
- g. Office Uses. Office or display or sales space of a wholesale, jobbing, or distributing house; office accessory to a lawful use.
- h. Public Service Uses. Public service pumping station; public service sub-station, automatic telephone exchange; fire station; police station.
- i. Open Space and Recreational Uses. Open space in public ownership for active or passive recreational use or to the conservation of natural resources; including but not limited to the waterway areas, beaches, reservations, parks, and playgrounds and open space in private ownership for active or passive recreational use or for the conservation of natural resources.

- j. Service Uses. Barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop; caterer's establishment; photographer's studio; printing plant; taxidermist's shop; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop; container redemption center; provided that such use occupies a gross floor area no greater than 2,500 square feet; and provided further that all storage of beverage containers for a container redemption center use is located entirely within a building, and that such use is not within fifty (50) feet of a Residential District.
- k. Restaurant Uses. Lunchroom, restaurant, cafeteria, or other place for the service or sale of food or drink for on-premises consumption, provided that there is no dancing nor entertainment other than by recording, radio, or television, and that neither food nor drink is served to, or consumed by, persons while seated in motor vehicles; provided that such use occupies a gross floor area no greater than 2,500 square feet.
- l. Accessory Uses. Any of the following uses accessory to an allowed use, subject to the limitations and restrictions of Article 10:
 - (i) Accessory parking for occupants, employees, customers, students, and visitors, provided accessory to any allowed or conditional use of this Article.
 - (ii) The storage of flammable liquids and gases incidental to a lawful use.
 - (iii) The wholesale or retail sale of goods manufactured or packaged on the Lot.
 - (iv) Any use ancillary to, and ordinarily incident to, a lawful main use.
 - (v) Facilities for the temporary berthing on shore of personnel of Vessels under repair.
- 2. Conditional Uses. Except as otherwise provided in this Section 42D-3, no land (including submerged land and Tidelands), water area, or structure in a Waterfront Manufacturing District shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6 unless such use is specified in this Subsection 2.

- a. Marine Terminals. Marine terminals and related structures for the transfer between ship and shore of goods and/or passengers transported in waterborne commerce.
- b. Industrial Uses. Any of the following uses, provided waterfront access is required for receipt or dispatch of goods to and from the site or for other use of the water, and provided the use is located a minimum of one hundred (100) feet from a Residential District or an open space subdistrict subject to the requirements of Article 33; otherwise forbidden:

Any use which is objectionable or offensive because of special danger or hazard, or because of cinders, dust, smoke, refuse matter, flashing, fumes, gases, vapor, or odor not effectively confined to the Lot, or because of noise or vibration perceptible without instruments more than two hundred and fifty (250) feet outside the perimeter of the Lot or, if a Residential District is within two hundred and fifty (250) feet of the Lot, at any point inside such Residential District.

Batching or casting of concrete including handling and/or storage of cement, lime, sand, stone, or other aggregates.

Curing, dyeing, washing, or bulk processing feathers, felt or hair.

Curing, dyeing, finishing, or tanning fur or leather.

Curing, drying, or smoking of fish or meat.

Disposal, handling, or storage of radioactive waste.

Distillation of wood or bones.

Incineration or reduction of garbage, offal, or dead animals.

Manufacture of

Asphalt or asphalt products.

Charcoal, fuel briquettes, or lampblack.

Chemicals including acetylene, aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black or bone black, cleaning or polishing preparations, creosote, disinfectants, exterminating agents, fungicides, hydrogen or oxygen, industrial alcohol, insecticides, potash, plastic materials or synthetic resins, or hydrochloric, picric, or sulfuric acids or derivatives.

Coal, coke, or tar products, including gas.

Fertilizers.

Gases in amounts exceeding two thousand cubic feet a day.

Gelatin, glue, or size.

Gypsum.
Linoleum or oil cloth.
Matches.
Paint, turpentine, or varnish.
Plastic (raw).
Rubber (natural or synthetic) including tires, tubes, or similar products.
Soaps or detergents, including fat rendering.
Reduction, refining, or smelting metal or metal ores.
Refining petroleum or petroleum products.
Removal of gravel, loam, sand, or stone except for reuse on the same lot or incidental to the erection of a building on such lot.
Sewage disposal plant.
Solvent extracting.
Storage of gases in amounts exceeding ten thousand cubic feet.
Wool scouring or pulling.

- c. Transportation Uses. Bus terminal; bus station; railroad passenger station; motor freight terminal; yard for storing or servicing trucks or buses; rail freight terminal; storage yard accessory to railroad operation; provided that no portion of such use is located within one hundred (100) feet of a Residential District.
- d. Office Uses. Office of professional person, not accessory to a main use; clinic not accessory to a main use; real estate, insurance, financial service institution, or other agency or government office; office building, post office, bank (other than drive-in bank), or similar establishment; provided that such use occupies no greater than twenty-five percent of the gross floor area of the structures or buildings on the Lot.
- e. Local Retail Uses. Store primarily serving the local retail business needs of the residents of the neighborhood, including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, packaged alcoholic beverages, drugs, tobacco products, clothing, dry goods, books, flowers, paint, hardware, and minor household appliances.
- f. Community Uses. Library or museum, not conducted for profit and not accessory to any other use; accessory library or museum, not conducted for profit; place of worship; monastery; convent; parish house; adult education center; community center; settlement house.

- g. Educational Uses. Day care center; nursery school; kindergarten; trade, professional, or other school; machine shop or other noisy activity accessory to a school, college, or university; elementary or secondary school; college or university, scientific research and teaching laboratories accessory to an elementary or secondary school, college or university, trade, professional, or other school, hospital, or hospital providing custodial care.
- h. Open Space and Recreational Uses. Open space recreational building; private grounds for games and sports.
- i. Residential Uses. Temporary dwelling structure which is ordinarily incident to a lawful use.
- j. Vehicular Uses. Parking lot; parking garage; repair garage; gasoline service station; car wash; sale and installation within a building of batteries, seat covers, tires and similar automotive parts and accessories; rental agency, storing, servicing, and/or washing rental motor vehicles and trailers; provided that such use is located at least one hundred (100) feet from the High Tide Line.
- k. Service Uses. Any of the following uses occupying a gross floor area greater than 2,500 square feet: Barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry-cleaner; tailor shop; hand laundry; dry-cleaning shop; caterer's establishment; photographer's studio; printing plant; taxidermist's shop; upholsterer's shop; carpenter's shop; electrician's shop; plumber's shop; radio and television repair shop.
- l. Restaurant and Entertainment Uses. Lunchroom, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, which use occupies a gross floor area exceeding 2,500 square feet. Place for sale and consumption of food and beverages (other than drive-in restaurant) providing dancing or entertainment or both; theatre (including motion picture theatre but not drive-in theatre); concert hall; dance hall; skating rink; bowling alley; pool room; billiard parlor; other social, recreational or sports center conducted for profit; or any commercial establishment maintaining and operating any amusement game machine (other than as an accessory use); provided that such establishment is customarily open to the public at large and does not exclude any minor by reason of age as a prevailing practice.
- l. Institutional Uses. Penal or correctional institution; detention home.

- m. Service Uses: Radio or television studio; animal hospital or clinic; kennel; pound.
 - n. Outdoor Storage Uses. Outdoor storage of used material.
3. Forbidden Uses. No land (including submerged land and Tidelands), building, or structure in a WM district shall be erected, used, or arranged or designed to be used, in whole or in part, for any use not specified in this Section as an allowed or conditional use, except for such nonconforming uses as may be allowed to be continued under the provisions of Article 9. In any event, any use described in Use Item 34A or 38A of Table A of Section 8-7 is forbidden in a Waterfront Manufacturing District. No portion of any floating structure may be used or arranged or designed to be used for any use other than a Water-Dependent Use.

(↑As amended on September 30, 1993 and October 6 and November 21, 1996.)

SECTION 42D-4. Performance Standards for All Uses. Within a Waterfront Manufacturing District, each use shall comply with the provisions of this Section.

1. None of the following effects shall be allowed:
 - a. Any emission beyond the boundaries of the Lot that is known to or can be shown to endanger human health or cause damage to property or significant damage to vegetation.
 - b. Any emission of radioactivity or any biohazard that exceeds any applicable local, state, or federal regulation.
 - c. Any electrical disturbance which interferes unduly with the normal operation of equipment or instruments or which is reasonably likely to cause injury to any person located outside the Lot.
 - d. Any surface water or groundwater contamination that exceeds any applicable state or federal regulations.
2. Any noise, air pollutant, vibration, dust, odor, change in temperature, or direct or sky-reflected glare detectable by the human senses without the aid of instruments shall not be allowed to emanate more than fifty (50) feet beyond the boundaries of the Lot upon which a use is located, or to emanate more than twenty (20) feet beyond the boundaries of the Lot upon which a use is located if the Lot abuts or is across the street from a Residential District.

SECTION 42D-5. Screening and Buffering. Within a Waterfront Manufacturing District, the following screening and buffering requirements shall apply, subject to the provisions of Section 13-3.

1. Where a use, other than a Residential Use, abuts a Residential District, such use shall provide and maintain along the property line(s) abutting such Residential District a screen that consists of one of the following combinations of plant materials and fencing:
 - a. a strip at least five (5) feet wide, densely planted with shrubs and trees, and a heavy-duty vinyl-clad chain-link fence at least six (6) feet high, but not more than eight (8) feet high; the planting shall be located behind the fencing toward the bulk of the property within the Waterfront Manufacturing District; or
 - b. a strip at least five (5) feet wide, planted with trees, and a stockade or board-type wooden fence, without plywood sheeting, constructed to be at least fifty percent (50%) opaque and at least six (6) feet high, but not more than eight (8) feet high; the planting shall be located behind the fencing toward the bulk of the property within the Waterfront Manufacturing District.
2. Off-street parking facilities and lots, off-street loading areas, and accessory storage areas shall be screened from view from public rights-of-way other than rear alleys providing access only. Except as limited by the provision of Section 18-3 of this Code concerning corner traffic visibility, such screening shall consist of trees and shrubs densely planted in a strip at least five (5) feet wide on the inside edge of a steel-picket or stockade or board-type wooden fence, provided that such fencing is not more than fifty percent (50%) opaque and is not less than four (4) feet high or more than six (6) feet high.
3. Shrubs required by this Section shall consist of evergreen or a mixture of deciduous and evergreen, medium to heavy size, densely planted to provide a mature appearance within three (3) years. Trees required by this section shall be deciduous, evergreen, or some combination thereof. Deciduous trees shall be minimum three- (3)-inch caliper at the time of planting and planted twenty to twenty-five (20-25) feet on center. Evergreen trees shall be a minimum of twelve (12) feet high and planted twelve to fifteen (12-15) feet on center. Approximately three (3) inches of pine-bark mulch shall be placed within the planting strip at the time of planting and replenished as necessary.
4. Landscaping required by this Section shall be maintained in a healthy growing condition, free of refuse and debris. All plant materials and

fencing shall be arranged and maintained so as not to obscure the vision of traffic in accordance with Section 18-3. There shall be no parking of vehicles in areas used for screening and buffering.

5. Disposal areas, dumpsters, and ground-mounted mechanical equipment shall be screened from view from public rights-of-way, other than rear alleys providing access only, with an opaque wall or fence; for disposal areas and dumpsters such wall or fence shall be at least six (6) feet high but not more than eight (8) feet high.
6. Roof-mounted mechanical equipment shall be painted to blend with adjacent or nearby building materials or shall be screened by wood, brick, or similar material.

SECTION 42D-6. Dimensional Regulations. Within a Waterfront Manufacturing District the following dimensional requirements apply to all buildings, structures, and uses:

1. Minimum Lot Size: none.
2. Minimum Lot Width: none.
3. Maximum Floor Area Ratio: within a WM-1 subdistrict: 1.0
within a WM-2 subdistrict: 2.0
4. Maximum Height: within a WM-1 subdistrict: 35 feet
within a WM-2 subdistrict: 55 feet
5. Minimum Front Yard: thirty-five (35) feet if adjacent to a Residential District, otherwise none.
6. Minimum Rear Yard: thirty-five (35) feet if adjacent to a Residential District, otherwise none.
7. Minimum Side Yard: thirty-five (35) feet if adjacent to a Residential District, otherwise none.

SECTION 42D-7. Regulations. The Boston Redevelopment Authority may promulgate regulations to administer this article.

SECTION 42D-8. Severability. The provisions of this Article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

SECTION 42D-9. **Definitions.** Words and phrases defined in Appendix A to Article 42A, when capitalized in this Article 42D, have the meanings set forth in said Appendix A, except that for the purposes of this Article 42D only:

1. "Residential District" means an S, R, or H district or a subdistrict subject to the regulations governing an S, R, or H district.
2. "Residential Uses" means uses described in Use Items 1 through 8A of Table A of Section 8-7.

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↓ARTICLE 42E

HARBORPARK DISTRICT

FORT POINT WATERFRONT

(↓Article inserted on January 28, 1991*)

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*Date of public notice: December 17, 1990 (see St. 1956, c. 665, s. 5).

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Appendix A - Definitions

Appendix B - Water-Dependent Uses and
Facilities of Public Accommodation

(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 42E-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the Fort Point Waterfront within the Harborpark District as required by the provisions of the Harborpark Interim Planning Overlay District, Article 27C of this Code. Together with Articles 42A, 42B, and 42F, this Article establishes the Harborpark District. The goals and objectives of this Article and the Harborpark District Plan are to protect the Harborpark District from inappropriate land and water uses; to promote balanced growth along Boston's shoreline; to allow the waterfront to be used as a public resource and thereby to extend its use and benefit to the greatest number of people; to preserve and protect public open space and beach area within the harbor area; to promote public access to the waterfront; to promote residential and mixed-use commercial activities compatible with adjacent areas; to promote the economic growth and development of water-dependent and water-related commercial activity; to protect the working waterfront and preserve areas for water-dependent uses; to promote public waterborne transportation; and to promote uses which integrate uses, activities, and physical connections between the harbor and its surrounding neighborhoods.

SECTION 42E-2. Recognition of the Harborpark District Plan. In accordance with Section 27C-16 of this Code, which requires production of comprehensive planning policies, development controls, and design guidelines for the Harborpark District, the Zoning Commission hereby recognizes the Harborpark District Plan as the general plan for the Fort Point Waterfront within the Harborpark District. The Harborpark District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Fort Point Waterfront within the Harborpark District. The Harborpark District Plan incorporates the Fort Point Waterfront District Plan. This Article is an integral part of and one of the means of implementing the Harborpark District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 42E-3. Physical Boundaries. The provisions of this Article are applicable only in the Fort Point Waterfront of the Harborpark District. The boundaries of the Fort Point Waterfront are as shown on the map entitled "Map 4A Harborpark District: Fort Point Waterfront and Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 4 South Boston')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 42E-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Fort Point Waterfront within the Harborpark District and applies to the use or occupancy of any structure or land (including submerged land and Tidelands) and the erection, reconstruction, extension, or alteration of any structure or part thereof as specified in Section 4-1 regarding the conformity of structures and land to this Code. Exceptions to the provisions of this Article, pursuant to Article 6A, shall not be available except to the extent expressly

provided in this Article or Article 6A. Application of the provisions of Article 27C to the Fort Point Waterfront within the Harborpark District is rescinded on the effective date of this Article, except as provided below. For the Fort Point Waterfront, except where specifically otherwise indicated in this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 24, inclusive, of this Code. Where conflicts exist between the provisions of this Article and the remainder of the Code, the provisions of this Article shall govern. The following Proposed Projects, however, are exempt from the provisions of this Article and are governed by the rest of this Code:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.
3. Any Proposed Project for which application for approval of a development impact project plan, planned development area development plan, or planned development area master plan has been submitted to the Boston Redevelopment Authority prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that:
 - (a) such development impact project plan, planned development area development plan, or planned development area master plan (i) does not elect, by its terms, to be governed by this Article, and (ii) has been or is thereafter approved by the Boston Redevelopment Authority pursuant to such application, whether or not such Proposed Project, such application or such development impact project plan, planned development area development plan, or planned development area master plan is thereafter modified or amended;
 - (b) no building in such Proposed Project exceeds a building height equal to the greater of (i) two hundred fifty (250) feet or (ii) with regard to a Proposed Project for which a planned development area development plan has been approved by the Boston Redevelopment Authority, such greater height as may be allowed by an exception granted pursuant to Article 6A, which greater height shall not exceed the greatest building height permitted by such planned development area development plan at the time of the first notice of hearing before the Zoning Commission for adoption of this Article;

- (c) such Proposed Project shall be subject to the provisions of Section 42E-5; and
- (d) such Proposed Project shall be subject to the provisions of Sections 42E-7 and 42E-21(2), but only if and to the extent that
 - (i) the use limitations and numerical standards set forth in Code of Massachusetts Regulations title 310, Sections 9.51(3)(b), 9.51(3)(c), and 9.53(2)(c) are more restrictive than the requirements of Sections 42E-7 and 42E-21(2) and
 - (ii) the requirements of Sections 42E-7 and 42E-21(2), pursuant to Code of Massachusetts Regulations title 310, Section 9.34(2)(b)(1), are substituted, as a part of the Harborpark District Plan, for the use limitations and numerical standards set forth in Code of Massachusetts Regulations title 310, Sections 9.51(3)(b), 9.51(3)(c), and 9.53(2)(c) with regard to the Proposed Project.

The height restriction set forth in paragraph (b) immediately above and the provisions of Sections 42E-7 and 42E-21(2) shall be deemed part of the Harborpark District Plan as it applies to such Proposed Project, for the purposes of Code of Massachusetts Regulations title 310, Section 9.34(2)(b)(1), in connection with substitutions for use limitations and numerical standards set forth in Code of Massachusetts Regulations title 310, Sections 9.51(3)(b), 9.51(3)(c), 9.51(3)(e), and 9.53(2)(c).

TIDELANDS REGULATIONS

↑SECTION 42E-5. **Chapter 91 Requirements.** In accordance with Chapter 91 of the General Laws of Massachusetts ("Chapter 91") and the regulations promulgated thereunder, certain Projects (as that term is defined below) located in Tidelands require a license ("Chapter 91 License") from the Commonwealth's Department of Environmental Protection ("DEP"). Section 18 of Chapter 91 requires that the planning board of a municipality in which a Project requiring a Chapter 91 license is located (i.e., the Boston Redevelopment Authority, in Boston) submit a written recommendation ("Section 18 Recommendation") stating whether the planning board believes the Project would serve a proper public purpose and would not be detrimental to the public's rights in Tidelands (the "Section 18 Standard"). Such a Section 18 Recommendation with respect to a Project requiring a Chapter 91 License and located in the Fort Point Waterfront within the Harborpark District shall be made by the Boston Redevelopment Authority in accordance with the provisions of Subsection 1 of this Section 42E-5. For the purposes of this Section 42E-5 only, the term "Project" shall mean a development, activity, or change of use requiring a Chapter 91 license.

1. Determination of Proper Public Purpose. The Boston Redevelopment Authority, in making a Section 18 Recommendation regarding a Project located in the Fort Point Waterfront within the Harborpark District, shall determine whether such Project serves a proper public purpose and would not be detrimental to the public's rights in Tidelands. The Boston Redevelopment Authority shall base such determination on the conformity of the Project to the provisions of Subsections 2 through 7 of this Section and on the extent to which the Project reasonably and appropriately preserves and enhances the public's rights in Tidelands including, without limitation, the public's:
 - (a) visual access to the water, whether such Project is for a Water-Dependent or non-Water-Dependent use on Private or Commonwealth Tidelands;
 - (b) rights to fishing, fowling, and navigation and the natural derivatives thereof, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Private or Commonwealth Tidelands;
 - (c) physical access to and along the water's edge for recreation, commerce, and other lawful purposes, and interest in public recreational opportunities at the water's edge and open space for public use and enjoyment, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Commonwealth Tidelands;
 - (d) interest in the preservation of the historic character of the Project's site;

- (e) interest in industrial and commercial waterborne transportation of goods and persons;
- (f) interest in repair and rehabilitation of dilapidated piers that blight the Harborpark District and limit public access; and
- (g) interest in safe and convenient navigation in Boston Harbor, including without limitation:
 - (i) navigation by water transportation Vessels, such as ferries, water taxis, water shuttles, or commuter vessels, including, without limitation, appropriate and convenient navigation by such Vessels outside of the Main Shipping Channel and other established channels;
 - (ii) navigation by deep draft Vessels, including without limitation, appropriate navigation in the Main Shipping Channel and other established channels and the requirements of turning, anchorage, and approaches to deep water piers and berths;
 - (iii) navigation by Recreational Vessels and small Commercial Vessels outside of the Main Shipping Channel and other established channels as necessary or convenient for such vessels to avoid interference with water transportation Vessels and deep draft shipping and as otherwise required for the purposes of harbor traffic management; and
 - (iv) navigation, as appropriate to the site, by U.S. Coast Guard, U.S. Naval, police, fire, and other public safety Vessels.

2. Public Access to the Waterfront and Open Space. Public access to the waterfront and Open Space is a central policy of the Harborpark District Plan. Pursuant to this policy, the Boston Redevelopment Authority shall not make a positive Section 18 Recommendation with respect to a Project that the Boston Redevelopment Authority determines will significantly interfere with public rights to walk or otherwise pass freely on Commonwealth Tidelands for purposes of commerce, recreation, and all other lawful activities; or on Private Tidelands for purposes of fishing, fowling, navigation, and the natural derivatives thereof. The Boston Redevelopment Authority shall find that the Section 18 Standard is not met if the Project does not comply with the following public access conditions:

- (a) To the extent that the Project site includes Flowed Private Tidelands, the Project shall allow continuous, on-foot, lateral passage by the public in the exercise of its rights therein, wherever feasible; any Pier,

wharf, groin, jetty, or other structure on such Tidelands shall be designed to minimize interference with public passage, either by maintaining at least a five-foot clearance above the ground along the high water mark, by providing a stairway for the public to pass laterally over such structures, or by other means of lateral access substantially consistent with the foregoing; where obstruction of continuous access below the high water mark is unavoidable, the Project shall provide free lateral passage to the public above said mark in order to mitigate interference with the public's right to pass freely on Flowed Private Tidelands;

- (b) To the extent that the Project site includes Flowed or Filled Commonwealth Tidelands, or Filled Private Tidelands, the Project shall include reasonable measures to provide on-foot passage on such lands for the public in the exercise of its rights therein, in accordance with the following provisions:
 - (i) if the Project is not a Water-Dependent Use Project, said Project shall provide a public Pedestrian Access Network;
 - (ii) if the Project is a Water-Dependent Use Project, the Project shall provide for public passage by such means as are consistent with the need to avoid undue interference with the Water-Dependent Use or Uses in question and to avoid any safety hazard to people working on or visiting the Project site; measures which may be appropriate in this regard include, but are not limited to, allowing the public to pass laterally along portions of the Project shoreline or transversely across the site to a point on the Project shoreline;
- (c) All Open Space areas established pursuant to Section 42E-6 located on Commonwealth Tidelands and all Public Access Facilities described in paragraphs (a) and (b) of this Subsection 2 shall be open and accessible to the public twenty-four (24) hours a day. No gates, fences, or barriers may be placed on said Public Access Facilities or Open Space in a manner that would impede or discourage the free flow of pedestrian movement thereon. The foregoing shall not be deemed to prohibit the placing of temporary barriers as required in emergencies or in connection with construction, maintenance, or the like, provided that interference with pedestrian access and passage is minimized to the extent reasonably practicable and consistent with public safety and that such barriers are in place no longer than necessary. All such Public Access Facilities shall be Accessible to Physically Handicapped Persons as those terms are defined in Section 30-2. Active pedestrian use of

such Open Space areas and Public Access Facilities shall be encouraged on a year-round basis, particularly for water-related activities, through such means as appropriate ground level uses of adjacent buildings and facilities and amenities designed to be attractive to pedestrians. Maintaining, cleaning, landscaping, and managing such Open Space areas and pedestrian access facilities shall at all times be the responsibility of the Chapter 91 licensee of the Project. The Applicant for any Project subject to or electing to comply with Large Project Review shall include in the urban design component of its Draft Project Impact Report, submitted pursuant to Large Project Review, an Open Space and Public Access Plan, including plans, drawings, specifications, descriptions of proposed uses, and descriptions of proposed management measures and access-related rules and regulations, if any, sufficient to permit the Boston Redevelopment Authority to determine the conformity of the Project to this Subsection 2 and Section 42E-6, and to make a Section 18 Recommendation.

(d) Any Project required to provide Public Access Facilities in accordance with paragraph (b), above, shall encourage public patronage of such facilities by placing and maintaining adequate signage at all entryways and at other appropriate locations on the site; said signage shall:

- (i) conform to Article 11, Signs, of the code;
- (ii) conform, as applicable, to design guidelines for Harborwalk signage to be issued as regulations by the Boston Redevelopment Authority; and
- (iii) include at least one sign, conforming to such design guidelines and placed in a prominent location, which advises the public of its access rights and discloses whatever access-related rules and regulations are in effect, if any.

3. Creation of Housing on Land not Owned by a Public Agency. In a Project to construct ten (10) or more dwelling units in the Harborpark District on a Lot not owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least ten percent (10%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent that such

ten percent requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.2, and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date. For the purpose of this Subsection 42E-5.3 and of Subsection 42E-5.4, space devoted to hotel uses shall not be deemed to be a dwelling unit.

4. Creation of Housing on Land Owned by a Public Agency. In a Project to construct four (4) or more dwelling units on a Lot that is owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least twenty-five percent (25%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent such twenty-five-percent (25%) requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by the Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.5, and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of Article 42A, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date.
5. Provision for Water Transportation Facilities. To promote an effective water transportation system and to ensure use of the waterfront and full access to recreational, commuting, and economic activities, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met with respect to a Project located in the Fort Point Waterfront unless the Project conforms to the requirements for water transportation facilities set forth below, as applicable:
 - (a) Water Transportation Facility Requirement. In making a Section 18 Recommendation with respect to such a Project, the Boston Redevelopment Authority shall consider the extent to which provision is made on the Project site for waterborne passenger transportation

facilities, including, without limitation, terminals and landings as appropriate to the use, scale, and location of the Project, for water ferries, water shuttles, or water taxis, and free public landings and in accordance with the water transportation guidelines of the Harborpark District Plan.

- (b) Shoreline Construction. In order to provide appropriate docking areas for emergencies and other harbor activities, all portions of the shoreline of a Project consisting of seawalls, bulkheads, or Piers, which are restructured and which abut waters accessible by Vessels shall be constructed, to the extent reasonably practicable, in such a manner as can accommodate such Vessels alongside for dockage.
6. Uses Allowed in Tidelands Proposed to be Filled and on Floating Structures. No portion of a Project located on Tidelands which are filled after the date of the first notice of hearing before the Zoning Commission on this Article, shall be erected, used, or arranged or designed to be used (a) except for a Water-Dependent Use otherwise allowed or conditionally permitted, subject to the provisions of Article 6, or (b) except as otherwise provided below. In making a Section 18 Recommendation with respect to a Project involving such new fill, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless such new fill is limited to the extent reasonably practicable by measures such as substituting pile-supported or floating structures for new fill or relocating the use to a position above the High Tide Line. The foregoing shall not, however, prohibit or limit the use of new fill the purpose of which is to eliminate irregularities in or repair previously altered portions of the shoreline included in the Project, provided that such new fill replaces previously authorized fill elsewhere along such shoreline on a one-to-one square foot basis (new fill to removed fill). The foregoing shall also not prohibit or limit the use of new fill the purpose of which is to accommodate mechanical or structural elements of the Project that enter the seabed, such as, without limitation, elevator shafts, ventilation shafts, utility conduits, piles, or the like, provided that such fill is limited to that reasonably required under the circumstances and provided, further, that all such mechanical elements, structural elements, and fill are wholly contained within the edges of a Pier. Piles are not considered "fill" for the purposes of this Article. New fill, in any event, is prohibited in any area where Pier construction or extension is prohibited by this Code.

No floating structure, other than a Vessel, shall be used or arranged or designed to be used except for a Water-Dependent Use otherwise allowed for the location of such structure or conditionally permitted, subject to the provisions of Article 6.

7. Regulations Governing Piers and Other Structures in the Fort Point Waterfront. Within the Fort Point Waterfront, no portion of any Pier, other than an Existing Pier, shall be erected, used, or arranged or designed to be used except as publicly accessible Open Space or for a Water-Dependent Use otherwise allowed or conditionally permitted, subject to the requirements of Article 6, for the location pursuant to this Article.

(↑ As amended on May 9, 1996.)

OTHER REGULATIONS APPLICABLE IN THE FORT POINT WATERFRONT

SECTION 42E-6. Open Space Requirements. Any Proposed Project in the Fort Point Waterfront involving new construction at grade, except a Proposed Project with a gross floor area of 2,500 square feet or less used exclusively for one or more Water-Dependent Uses, shall provide Open Space as follows: North of the centerline of Northern Avenue, such a Proposed Project shall devote to Open Space at least fifty percent (50%) of the Lot Area of such Proposed Project. South of the centerline of Northern Avenue, such a Proposed Project shall devote to Open Space at least thirty percent (30%) of the Lot Area of such Proposed Project, provided that a Proposed Project located in a Planned Development Area may meet some or all of this Open Space requirement by causing or contributing to the creation of Open Space off site pursuant to the provisions of Subsection 42E-16.3 and provided, further, that the development plan for a Proposed Project located in a Planned Development Area may require that a greater portion than thirty percent (30%) of the Lot Area be devoted to Open Space. For the purposes of this Section 42E-6, "Northern Avenue" refers to the alignment of said street as it existed as of the effective date of this Article.

For the purposes of this Article, the term "Open Space" shall mean land areas and areas on Piers excluding (a) any area occupied by a building or roofed structure; (b) any parking lot or parking area at grade; (c) any street; (d) any private road or area devoted to motor vehicle use; (e) any salt-water area below the mean high tide line, other than areas on Piers; (f) any fresh water area more than ten (10) feet from the shoreline; (g) marina slips or floats or other floating structures; (h) swimming pools; and (i) tennis courts.

The foregoing notwithstanding, the following areas shall be deemed "Open Space":

- (u) any area on top of a building or other structure, if such area is landscaped and usable as Open Space and is directly accessible to the public from an elevated public way twenty-four hours a day. Such area shall not be deemed "directly" accessible if the grade change between the area and such public way exceeds three (3) feet.
- (v) any area occupied by a building not exceeding a Building Height of fifteen (15) feet and a gross floor area of four hundred (400) square feet and reserved exclusively for use as a Water-Dependent Use or a recreational use permitted as a conditional use pursuant to Subsection 42E-21.4(a);
- (w) any area occupied by a street or private way open only to pedestrians and emergency vehicles;
- (x) any area at grade, pedestrian-accessible to members of the public twenty-four (24) hours per day, covered by a weather-protective enclosure or roof

structure, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A. For the purposes of this clause (x), Open Space shall not include any such area covered by a portion of a building, which portion is used or designed to be used for human occupancy or which contains or supports mechanical equipment principally serving portions of the building other than the enclosed Open Space area;

- (y) any area, at grade, otherwise meeting the definition of Open Space, as set forth in this Section, but covered by a pedestrian skywalk or skybridge, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A;
- (z) any area beneath an archway, which archway is not less than forty (40) feet wide at grade and forty (40) feet high at its apex and open at both ends.

All Open Space areas shall be Accessible to Physically Handicapped Persons, as those terms are defined in Section 30-2. The foregoing shall not prohibit occasional access to or over Open Space by service vehicles reasonably required to construct or maintain the structures on the Lot or by emergency vehicles. However, routine access to or over Open Space areas by vehicles transporting, loading, or unloading passengers or supplies for the normal operation of buildings and uses is not consistent with the foregoing definition.

SECTION 42E-7. Waterfront Yard Area Requirements. Except as otherwise expressly provided in this Article, each Lot in the Fort Point Waterfront adjacent to or including the High Tide Line and seaward of the first public way inland from the High Tide Line shall include a Waterfront Yard Area adjacent to and landward of such High Tide Line, excluding portions of the High Tide Line occupied by Piers. A Waterfront Yard Area shall also be required along the edges of any Pier. The required Waterfront Yard Area landward of the High Tide Line and the required Waterfront Yard Area on Piers shall be connected so as to provide a continuous path along the waterfront, with a minimum width at the places of connection of no less than twelve (12) feet. The dimensions of the required Waterfront Yard Area are set forth in Table A of this Article.

TABLE A

Required Depth of Waterfront Yard Area

<u>Location</u>	<u>Required Setback (Shoreline, excluding Piers)</u>	<u>Required Setback (Sides of Piers)</u>	<u>Required Setback (Ends of Piers)</u>
Fort Point Waterfront	50'	12'	50'

The provisions of Article 6A shall be applicable to the Waterfront Yard Area requirement. The following additional provisions shall apply to the Waterfront Yard Area requirement:

1. Waterfront Yard Area Measurements. The depth of the Waterfront Yard Area shall be measured perpendicularly from the High Tide Line in the case of bulkheads, rip rap, fill, or shoreline and perpendicularly from the Ends and Sides of Piers. In locating the Waterfront Yard Area, the actual High Tide Line may be smoothed with such curves and chords as may be necessary to achieve a reasonably regular landward boundary. However, in no instance shall the Waterfront Yard Area be narrower than the required dimension measured perpendicularly from the actual High Tide Line. For the limited purpose of applying the Waterfront Yard Area Requirements of this Article, Pier 4 along its westerly Side (but no farther than the commencement of the filled areas extending westward from said Pier 4) and along its easterly Side, from the end of the Pier to Northern Avenue, shall be treated as a Pier. The Sides and the End of Pier 5 (Commonwealth Pier) are not located in the Fort Point Waterfront but are located in the adjacent South Boston Maritime Economy Reserve Subdistrict. All other waterfront within the Fort Point Waterfront shall be treated as "shoreline, excluding Piers."
2. Setback Requirements. No portion of any building or structure (including, without limitation, mechanical facilities associated with a building) shall be located in any Waterfront Yard Area, except walkways, landscape furniture, guardrails, cleats, bollards, pilings, boat ramps, and other structures (a) which do not materially interfere with pedestrian use of the Waterfront Yard Area or (b) which are required for operational or safety reasons to be located at the water's edge, provided that any resulting interference with pedestrian use of the Waterfront Yard Area is minimized to the extent economically practicable.

3. Exception to Waterfront Yard Area Setback Requirement. Any building or structure used for a Water-Dependent Use, including, without limitation, drydocks, enclosed or covered wet dock sheds, davits, hoists, mast markers, and the structures listed in Subsection 2 above, shall be permitted within the Waterfront Yard Area as necessary to avoid interference with any direct access to the water required for such Water-Dependent Use.
4. No portion of any Waterfront Yard Area shall be located on any floating structure.

↑SECTION 42E-8. **Urban Design Guidelines.** This Section 42E-8 establishes urban design guidelines for the Fort Point Waterfront of the Harborpark District. In addition to such guidelines, the urban design guidelines set forth in the Harborpark District Plan for the Fort Point Waterfront, approved by the Boston Redevelopment Authority on December 13, 1990, ("Fort Point Guidelines"), as the same may be amended from time to time, apply within the Fort Point Waterfront of the Harborpark District. The design guidelines established by this Section 42E-8 are as follows:

1. New development and rehabilitation shall reinforce the traditional pattern, height, and massing of the urban waterfront.
2. Buildings and spaces shall direct views and pedestrian movements towards the water.
3. Buildings on Piers shall be sited so as to reinforce the geometry of the Pier; and buildings near the water's edge shall not be massed so as to create a continuous wall along the water's edge.
4. Inland buildings shall reinforce the city street pattern and avoid continuous walls parallel to the water's edge by maintaining view and access corridors, especially at cross-streets.
5. Buildings shall be sited to provide view and access corridors towards the open water and to preserve views from Public Access Facilities and Open Space areas at the Ends of Piers. Open archways spanning a view corridor, which archways are not less than forty (40) feet wide at grade and forty (40) feet high at the apex and are oriented and designed to preserve the view corridor, as determined through design review, shall not be deemed inconsistent with this design guideline.
6. Building elements on a site shall generally step down in height towards the water's edge.

7. Open areas and buildings at or near the Ends of Piers shall offer opportunities for public views of the water and public amenities that attract the public to the water's edge.
8. Building massing shall enhance the air flow channels created by sea breezes that are beneficial to air quality in the City.
9. Open spaces, building entrances, shopfronts, shop windows, shop entrances, terraces, gardens, arcades, and similar elements shall be designed to enhance pedestrian activity, access to, and enjoyment of the waterfront. Blank walls, without windows or entrances facing onto pedestrian areas, shall be avoided to the extent practicable in building designs.
10. Facade treatment, building materials, and design details shall complement the traditional character of Boston's historic waterfront development patterns.
11. Setbacks, corner treatments, and other design details shall be used to minimize the sense of bulk of structures, and ornamental and decorative elements appropriate to the urban and historical waterfront context are encouraged.
12. Roofs of buildings shall be designed to minimize the visibility of roof structures and penthouses normally built above the roof and not designed to be used for human occupancy.
13. A Proposed Project should promote and enhance the quality of the pedestrian environment, by means such as: (a) pedestrian pathways connecting to the waterfront and, where appropriate, linking the waterfront and mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) use of materials, landscaping, public art, lighting, and furniture that enhance the pedestrian and waterfront environment; (d) pedestrian systems that encourage more trips on foot to replace vehicular trips; (e) other attributes that improve the pedestrian environment and pedestrian access to the waterfront and Boston Harbor; and (f) appropriate management and maintenance of pedestrian access within the Proposed Project.
14. In addition to the foregoing, design features of a Proposed Project shall take into consideration the characteristics of the site and its location in the Harborpark District, shall provide opportunities for special amenities, such as panoramic views of the Harbor, and shall enhance and reinforce any historic qualities of existing structures. New development shall be consistent with design guidelines established in the Harborpark District Plan.

(↑As amended on May 9, 1996.)

↓SECTION 42E-9. **Environmental Protection and Safety Standards for Proposed Projects.** Any Proposed Project involving new construction in the Fort Point Waterfront within the Harborpark District shall conform to the environmental protection and safety standards established in this Section, to the extent economically practicable, as determined in Large Project Review.

1. Waste Handling. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include a trash compactor or comparable facility for waste disposal management in an interior location and shall provide for the maintenance and cleanliness of such facility.
2. Area for Recyclable Materials. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include an interior area for the separation, temporary storage, and collection of recyclable materials. Such area shall be located in the vicinity of any off-street loading facility.
3. Provision of Safety Ladders. Any such Proposed Project, if adjacent to the water, shall provide a safety ladder or ladders extending from the water to an accessible area above the high water mark such that there shall be one safety ladder located approximately every one hundred (100) feet along those portions of the waterfront occupied by seawalls, piers, wharves, or other structures otherwise inaccessible to a person in the water. The foregoing notwithstanding, a safety ladder shall not be required in a location that would unreasonably interfere with docking facilities or other Water- Dependent Use, provided that safety ladders are placed at intervals most closely approximating one hundred (100) feet and not so interfering.

(↑As amended on May 9, 1996.)

SECTION 42E-10. **Off-Street Parking.** As provided in Section 42E-21.4(c), parking garages and parking lots are conditional uses. Within a Planned Development Area, off-street parking shall be provided as set forth in the Development Plan approved for such Planned Development Area.

↓SECTION 42E-11. **Off-Street Loading.** Within the Fort Point Waterfront, no off-street loading facilities shall be required for any Proposed Project with a gross floor area of less than ten thousand (10,000) square feet. For any Proposed Project with a gross floor area of ten thousand (10,000) or more square feet, the Applicant shall include in its Project Impact Report, prepared for Large Project Review, an analysis of the loading requirements of the Proposed Project and of the impacts of projected loading activities, together with a description of any off-street loading facilities required to meet those requirements and to mitigate, to the extent economically practicable,

projected impacts, and the Boston Redevelopment Authority shall determine the adequacy of such proposed loading facilities in accordance with Large Project Review.

(↑As amended on May 9, 1996.)

↓SECTION 42E-12. **Fort Point Waterfront: Maximum Allowed Building Height and Floor Area Ratio.** Except as otherwise may be allowed within a Planned Development Area established in accordance with Section 42E-15 and Section 3-1A of this code and except as otherwise provided in Section 42E-13, pertaining to transition zones, a Proposed Project within the Fort Point Waterfront is allowed a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of three (3); provided that any Proposed Project shall have a maximum building height of one hundred fifty-five (155) feet if such Proposed Project is subject to or shall elect to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(↑As amended on May 9, 1996.)

↓SECTION 42E-13. **Transition Zones.** This section establishes two "transition zones" within the Fort Point Waterfront Subdistrict. These transition zones are established in order to mediate the height of buildings between higher density areas and lower density or open space areas. The transition zones are located as designated on Map 4A of this Code.

1. Boston Wharf Transition Zone. Within that portion of the Fort Point Waterfront depicted on Map 4A as the "Boston Wharf Transition Zone," Proposed Projects are limited to a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of four (4).
2. Waterfront Transition Zone. Within that portion of the Fort Point Waterfront depicted on Map 4A as the "Waterfront Transition Zone," Proposed Projects are limited to a maximum building height of fifty-five (55) feet and a maximum FAR of three (3).
3. Northern Avenue Transition Zone. Within that portion of the Fort Point Waterfront depicted on Map 4A as the "Northern Avenue Transition Zone," Proposed Projects are limited to a maximum building height of seventy-five (75) feet and a maximum FAR of three (3), except for the improvements referred to on Page 2 of Exhibit C of the Planned Development Area dated March 16, 1995, for Planned Development Area No. 40.

(↑As amended on March 27, 1996.)

SECTION 42E-14. **Prohibition of Planned Development Areas; Combination of Parcels.** Within the Fort Point Waterfront, no Planned Development Area as that

term is used in Section 3-1A.a shall be permitted except as expressly permitted in this Article. Within the Fort Point Waterfront, parcels may be combined to form a single Lot notwithstanding that said parcels are separated by a street.

↓SECTION 42E-15. **Establishment of Area within Which Planned Development Areas May Be Permitted.** This section establishes one area within which Planned Development Areas ("PDAs") may be permitted within the Fort Point Waterfront. The purposes for establishment of the area within which PDAs may be permitted are: to establish a more flexible zoning law and encourage large-scale private redevelopment of the vacant areas in the Fort Point Waterfront while insuring high-quality design by providing planning and design controls; to provide a secure economic base for the downtown services, industrial, and waterfront economy; and to encourage development which knits together the surrounding neighborhoods. See Article 80 concerning the applicability of Planned Development Area Review.

1. Consistency with Section 3-1A; Review and Approval Requirements. The area in the Fort Point Waterfront within which PDAs may be permitted is designated on Map 4A of this Code as the "PDA Permitted Zone." No PDA is permitted within the Fort Point Waterfront except within the PDA Permitted Zone. Any application for development approval for a Proposed Project within the PDA Permitted Zone is subject to the provisions of this section and Sections 42E-16 through 42E-20, in addition to the provisions of Subsection 3-1A.a. See Article 80 concerning the applicability of Planned Development Area Review.
2. Reconstruction of Pre-existing Structures. A Proposed Project for the reconstruction of a structure in existence in a PDA as of the date of Development Plan approval and described in said Development Plan, or of a structure constructed pursuant to said Development Plan, shall be determined by the Boston Redevelopment Authority to be consistent with said Development Plan, provided that said reconstruction is substantially similar to the original structure. Said reconstruction, unless described as part of the original Proposed Project in said Development Plan, shall constitute a separate Proposed Project for all purposes hereunder.

(↓As amended on May 9, 1996.)

↓SECTION 42E-16. **Planned Development Areas: Use and Dimensional Regulations.** The land use and dimensional regulations for PDAs are established by this section.

1. Use Regulations. Proposed Projects within PDAs are subject to the use regulations set forth in Section 42E-21, except to the extent that the same are expressly modified by an approved Development Plan.

2. Dimensional Regulations. Proposed Projects within a PDA shall comply with the following FAR and building height standards. The maximum allowed building height and FAR for any such Proposed Project shall be as set forth in Sections 42E-12 and 42E-13 for Proposed Projects not located in PDAs, except that:
 - (a) within that certain area designated on Map 4A as the "PDA Height Zone," the maximum allowed building height within a PDA shall be one hundred fifty-five (155) feet and the maximum allowed FAR shall be four and one-quarter (4.25); provided that any such Proposed Project shall be allowed a maximum building height in Substantial Accord with two hundred fifty (250) feet if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6; and
 - (b) within that certain area designated on Map 4A as the Northern Avenue Transition Zone, the maximum allowed building height shall be as set forth in Section 42E-13.3 and the maximum allowed FAR shall be four and one-quarter (4.25).
 - (c) within that certain area designated on Map 4A as the "PDA Open Space Zone," only Open Space shall be permitted, as that term is defined in Section 42E-6 (subsection (u) of said Section 42E-6 being deemed inapplicable for the purposes of this Section 42E-16.2 only).
3. Open Space Regulations. A Proposed Project within a PDA shall comply with the provisions of Section 42E-6 regarding the provisions of Open Space; provided that, in lieu of the provision of Open Space on site, the Development Plan and any associated Cooperation Agreement with the Boston Redevelopment Authority may require the project proponent to acquire, construct, and maintain publicly-accessible Open Space outside of the project site, provided that such Open Space is:
 - (a) located inside the "PDA Permitted Zone;"
 - (b) designated and located consistently with the open space and other provisions of the Harborpark District Plan as it pertains to the Fort Point Waterfront;
 - (c) comparable in size and quality of location to the Open Space that would otherwise be required to be located on the project site;

- (d) otherwise satisfies the Design Component of Large Project Review and the standards for Planned Development Area Review approval, pursuant to Section 80C-4; and
 - (e) with the consent of the owner(s), is designated as an Open Space Subdistrict, pursuant to the provisions of Article 33.
4. Calculation of Open Space and Far. In the case of a Proposed Project within a PDA, Open Space and FAR, for purposes of this Article and Section 42E-16, shall be computed as though the land which is the subject of an approved Development Plan were in single ownership, notwithstanding actual ownership patterns or changes in ownership occurring after the date of approval of the Development Plan. In the event that an approved Development Plan is amended to add additional site area to the Proposed Projects, Open Space and FAR may, at the election of the project proponent, be computed on an aggregate basis for all of the land governed by such amended Development Plan, provided that, as of the date of any such computation, all such land is common ownership. If the proponent of a Proposed Project located on land owned by a public agency or such public agency constructs or causes the construction of a public street within said land at no cost or expense to the City of Boston, the Boston Redevelopment Authority, or any city department or agency, in accordance with the terms of an approved Development Plan, then the area of such public street may be included in the Lot Area for the limited purpose of computing FAR. Off-street parking located in a building or structure beneath or adjacent to an elevated roadway or viaduct and permitted in an approved Development Plan shall not be included in said FAR computation.

(↑ As amended on May 9, 1996.)

↓ SECTION 42E-17. **Planned Development Areas: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(↑ As amended on May 9, 1996 and July 31, 1997.)

↓ SECTION 42E-18. **Planned Development Areas: Public Benefit Criteria.** The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this Article if the Development Plan proposes a plan for public benefits, consistent with the Fort Point Waterfront District Plan, including, at a minimum, one of the following: (a) the creation of Affordable housing in accordance with the provisions of subsection 1,

below, of this section; (b) the provision of substantial street improvements in accordance with the provisions of subsection 2, below, of this section; (c) the provision of Open Space in accordance with the provisions of subsection 3 of this section; or (d) the provision of economic support in accordance with the provisions of subsection 4 of this section.

1. Development Plan Approval for Creation of Affordable Housing. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or cause the construction of housing if: (a) at least twenty percent (20%) of the gross floor area proposed to be newly constructed (as distinct from refurbished or rehabilitated) as part of the Proposed Project is devoted to Residential Uses; and (b) either (i) at least ten percent (10%) of the new dwelling units proposed in the Development Plan on site are Affordable; or (ii) the Applicant causes the creation, rehabilitation, or preservation of Affordable dwelling units off site by making a dollar contribution to the Neighborhood Housing Trust, or another entity acceptable to the Boston Redevelopment Authority, of not less than an amount calculated by multiplying the total number of dwelling units to be constructed as part of the Proposed Project by 0.2 and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date. On-site Affordable dwelling units shall be comparable in size, appearance, and quality to other dwelling units within the Proposed Project.
2. Development Plan Approval for the Provision of Street Improvements. The Boston Redevelopment Authority may approve a Development Plan providing, either directly or through funding, for substantial street improvements to streets adjacent to and in the vicinity of the PDA. Such street improvements must be consistent with any applicable street improvement regulations or guidelines and must be sufficient, as determined by the Boston Redevelopment Authority, to improve the appearance, condition, quality of design and materials, and accessibility and usability of the affected streets by pedestrians and general vehicular traffic, taking into account increased vehicular and pedestrian flows.
3. Development Plan Approval for Development of New Usable Open Space in the Fort Point Waterfront. The Boston Redevelopment Authority may approve a Development Plan proposing to develop or to cause the development of a usable Open Space in the Fort Point Waterfront additional to that otherwise required pursuant to Section 42E-6 if: (a) either (i) the new usable Open Space is of a useful condition, size, and type which is appropriate, under the circumstances pertaining at the time of the application for Development Plan approval, to contribute to the balance of

built and Open Space responsive to the needs of the Fort Point Waterfront; or (ii) the Development Plan details provision of sufficient assistance for successful development of usable Open Space, including provision of assistance for maintenance, programming, or other assistance; and (b) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to maintain the Open Space or (ii) to lease or otherwise transfer such Open Space for such use and maintenance (which may include a lease or transfer to the City of Boston or its designee). Plans, drawings, specifications, descriptions of proposed uses, and descriptions of proposed management areas and access-related rules, if any, pertaining to such Open Space shall be included in the Open Space and Public Access Plan required pursuant to Subsection 42E-5.2(c).

4. Development Plan Approval for the Expansion and Diversification of Boston's Maritime Industrial and Manufacturing Economies. The Boston Redevelopment Authority may approve a Development Plan that provides for direct economic support for the maritime-industrial economy or for the manufacturing economy. The project proponent must demonstrate that such support or assistance will significantly contribute to the creation of new jobs in the maritime-industrial or manufacturing economies or to the retention of such jobs that would otherwise be lost. Such support and assistance may include, but shall not be limited to: (a) provision of land or facilities, consistent with otherwise applicable regulations of this code, to a maritime-industrial or manufacturing operation below market cost; (b) sponsorship of one or more vocational education programs servicing the needs of the maritime-industrial or manufacturing economies; or (c) sponsorship of an information, outreach, and/or education program designed to increase the participation of Boston residents in the maritime-industrial or manufacturing economies.

(↑As amended on May 9, 1996.)

↓SECTION 42E-19. **Planned Development Areas: Recommendations from Community Groups and City Departments.** See Section 80C-5.3 (BRA Procedures for PDA Review: Public Notice and Comment) concerning procedures for public notice and comment in the review of a Development Plan.

(↑As amended on May 9, 1996 and July 31, 1997.)

↓SECTION 42E-20. **Planned Development Areas: General Design and Environmental Impact Standards.** In addition to the Large Project Review requirements set forth in Article 80 of this Code, Proposed Projects submitted as part of an application for Development Plan approval under Planned Development Area Review shall comply with the general design and environmental impact standards described herein. Compliance with these additional standards shall be determined

through Large Project Review. The purpose of these additional standards is to maintain and improve the quality of life in the Fort Point Waterfront.

1. Shadow Criteria. Each Proposed Project shall be arranged and designed in a way to minimize to the extent reasonably practicable shadows on any portion of dedicated public parkland and publicly accessible open space. Shadow studies shall be conducted in connection with any Proposed Project demonstrating compliance with the foregoing standard.
2. Wind. Buildings shall be designed to avoid excessive and uncomfortable downdrafts on pedestrians. Each Proposed Project shall be shaped, or other wind-baffling measures shall be adopted, so that the Proposed Project will not cause ground-level ambient wind speeds to exceed the standards in Table B of this Article.

TABLE B

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity*</u>	<u>Permitted Annual Occurrence Frequency</u>
Limit for All Pedestrian Areas	13.8 m/sec (31 mph)	1%
Major Walkways - Especially Principal Egress Path for High-Rise Buildings	13.8 m/sec	1%
Other Pedestrian Walkways - Including Street and Arcade Shopping Areas	11.2 m/sec (25 mph)	5%
Open Plazas and Park Areas, Walking and Strolling Areas	6.3 m/sec (14.1 mph)	15%
Open Plaza and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

* The effective gust velocity (egv) is defined as $egv = U + 1.5 fvc$, where U is the mean windspeed at a particular location and fvc is the root mean square of the fluctuating velocity component measured at the same location over the same time interval.

3. Transportation Access. Each Proposed Project that is subject to Large Project Review shall be subject to a Transportation Access Plan providing for effective transportation access and mitigation measures designed to minimize adverse traffic impacts on the Fort Point Waterfront and surrounding neighborhood and improve traffic flow and access within the affected area, such as measures designed to increase use of mass transit and other transportation alternatives to single-occupancy vehicles. Such Transportation Access Plan shall also provide for effective parking management measures to minimize adverse parking effects within the Fort Point Waterfront and surrounding neighborhood. The Boston Redevelopment Authority shall not issue an Adequacy Determination approving the Final Project Impact Report under Large Project Review for such a Proposed Project containing office, research center, local retail/service, and/or general retail uses (as those terms are further described in Section 42E-21) totaling two hundred fifty (250,000) or more square feet of gross floor area, unless the Transportation Access Plan for such Proposed Project reasonably demonstrates that a vehicle trip generation rate of one (1.0) vehicle per hour per one thousand (1,000) square feet of such uses, in the aggregate, will not be exceeded during the morning peak hours of 7:00 a.m. to 9:30 a.m.
4. Landmarks and Historic Buildings. Each Proposed Project shall generally be designed and arranged in such a way as to limit the reduction of light and air surrounding Landmarks and Historic Buildings and to minimize the shadow impact on their facades.
5. Enhancement of Pedestrian Environment. Each Proposed Project shall enhance the pedestrian environment, by means such as: (a) pedestrian pathways connecting to mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) materials, landscaping, public art, lighting, and furniture that enhance the pedestrian environment; (d) interior retail uses; (e) pedestrian systems that encourage more trips on foot; (f) sidewalk and street improvements that improve pedestrian flow and increase pedestrian safety on sidewalks and crosswalks; (g) other attributes that improve the pedestrian environment and pedestrian access to mass transit stations; (h) appropriate management and maintenance of public space within the Proposed Project; and (i) exterior or interior pedestrian passageways.
6. Boston Civic Design Commission Review. In addition to complying with the above standards, each Proposed Project shall be subject to review by the Boston Civic Design Commission, in accordance with the provisions of Article 28.

(↑ As amended on May 9, 1996.)

↓SECTION 42E-21. **Use Regulations Applicable In the Fort Point**

Waterfront. No land (including Tidelands and submerged land) water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, within the Fort Point Waterfront, except in conformity with the provisions of this Section and Section 8-6, subject to any modifications to such provisions as may expressly be set forth in the approved Development Plan for a Proposed Project located within a PDA.

1. Inclusion of Day Care Facilities. The provisions of this Subsection 1 apply only to Proposed Projects in the Fort Point Waterfront that exceed a Building Height of fifty-five (55) feet, or an FAR of two (2), or both. Any such Proposed Project having a gross floor area, not including floor area devoted to Residential Uses, Hotel Uses, or Community Uses and Cultural Facilities, which equals or exceeds one hundred thousand (100,000) square feet, shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table C of this Article. An Applicant for a Proposed Project subject to the provisions of this Subsection 1 may fulfill its obligations under this paragraph by either (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project in the Fort Point Waterfront or within the South Boston neighborhood, provided that any Proposed Project subject to the provisions of this Subsection 1 shall devote to day care facilities located on site an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. The provision of day care facilities in accordance with this Subsection 1 shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours. Such day care facilities provided as part of a Proposed Project shall not be included in the calculation of FAR for the Proposed Project.

TABLE C

Provision of Day Care Facilities

<u>Size of Proposed Project*</u> <u>(Gross Floor Area)</u>	<u>Minimum Day Care Facilities</u> <u>(Gross Floor Area)</u>
100,000 up to 200,000 sq.ft.	2% of gross floor area
200,000 up to 500,000 sq.ft.	4,000 sq.ft.
500,000 up to 1,000,000 sq.ft.	8,000 sq.ft.
More than 1,000,000 sq.ft.	12,000 sq.ft.

* Excluding floor area devoted to Residential, Hotel, or Community Uses and Cultural Facilities.

2. Facilities of Public Accommodation. Within any Proposed Project in the Fort Point Waterfront with a gross floor area of ten thousand (10,000) or more square feet, involving new construction or a change of use on the first story, the use of at least forty percent (40%) of the gross floor area of the first story of such Proposed Project shall be for indoor Facilities of Public Accommodation, otherwise allowed for such Proposed Project or conditional and permitted pursuant to Article 6.
3. Allowed Uses. Within the Fort Point Waterfront, except as otherwise provided in this Section 42E-21, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except in accordance with the provisions of this Subsection 3 and Subsection 4 of this Section 42E-21. Any use specified in this Subsection 3 is allowed as a matter of right, subject to the requirements set forth in the description of such use below.

(a) Water-Dependent and Water-Related Uses

(i) Water-Dependent Uses.

Dock, slip, pier, wharf, anchorage, or moorage for Commercial Vessels and Recreational Vessels awaiting servicing, provisions, on or off loading of people or cargo at delivery;
Water-Dependent recreational facility, Recreational Marina, facilities for the use, hire or charter of Commercial vessels, Boat Rental Establishment, recreational sailing or boating school, yacht club;

Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;

Aquarium, including uses reasonably appurtenant thereto such as gift shop, laboratory space, classrooms, restaurant, and food service uses, office space, conference facilities, meeting rooms;

Other cultural, educational, research, or training facilities dedicated primarily to marine purposes, or water-oriented exhibits;

Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;

Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;

Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, wave deflectors, and the like.

(ii) Water-Related Uses

Installation, repair, or servicing of boating accessories, marine equipment, marine instruments, or marine motors;

Chandlery, woodworking shop, electrical shop, or similar use for the repair and maintenance of Vessels;

Sale of marine hardware, or boating or diving supplies and equipment.

(b) Open Space/Recreational Uses

Open space for active or passive recreational use or dedicated to the conservation of natural resources, including but not limited to the waterways areas, beaches, reservations, parks, public gardens, and playgrounds; nonprofit sailing center or other public recreational facility operated by a nonprofit organization; publicly accessible garden conservatory or botanical garden.

(c) Community Uses and Cultural Facilities

Library, museum, gallery, concert hall, legitimate theater, auditorium, performance space, aquarium, or historical exhibit open to public generally;

Community center or community service facility;

Day care center.

(d) Residential Uses

Multifamily residential uses;
Group residence, limited, as defined in clause (22B) of Section 2-1;
Convalescent, nursing, or rest home.

(e) Hotel Uses

Hotel, conference and meeting facilities, restaurant, lounge, bar,
store primarily serving the retail needs of hotel, conference, and
meeting guests, health club, swimming pool, parking garage,
storage and office use accessory to hotel use.

(f) Office Uses

Office of professional persons, not accessory to a main use;
Real estate, insurance, financial service institution, or other agency
or government office;
Office or display or sales space of a wholesale, jobbing, or
distributing house, provided that the office or display or sales
space of the wholesale, jobbing, or distributing house is
associated with a Water-Dependent Use;
Office building, post office, bank (other than drive-in bank), or similar
establishment.

(g) Research Center Uses

Laboratories and facilities for teaching and for theoretical, basic, and
applied research, product development and testing, prototype
fabrication, or production of experimental products; the keeping
of marine life or laboratory animals incidental to a research or
development use; storage and office use accessory to a
research or development use;
Design, development, manufacture, compounding, packaging,
processing, fabrication, altering, assembly, repair, servicing,
renting, testing, handling, or transfer of products as would be
included in research and development uses, consistent with the
provisions of Subsection 36-4.1.

(h) Local Retail/Service Uses

Store primarily serving the local retail business or service needs of
the neighborhood and harbor/waterfront users, including but not
limited to chandlery, barber shop, beauty shop, shoe repair

shop, self-service laundry, pick-up and delivery station of laundry or drycleaner, tailor shop, hand laundry;
Store retailing one or more of the following but not limited to: food, baked goods, groceries, drugs, tobacco products, clothing, drygoods, books, film, video, art, flowers, paint, hardware, and small household appliances.

(i) General Retail Uses

Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage, provided that any Proposed Project for a general retail use shall be conditional if it: (a) establishes an occupancy for a general retail use having a gross floor area of seventy-five thousand (75,000) or more square feet; or (b) changes to a general retail use the use of a gross area of seventy-five thousand (75,000) or more square feet; or (c) enlarges a general retail use so as to result in a total gross floor area of seventy-five thousand (75,000) or more square feet.

(j) Restaurant Uses

Lunchroom, restaurant, cafeteria, or other place for the service or sale of food or drink for on-premises consumption, including outdoor cafes;

Place for sale and consumption of food and beverages (other than drive-in restaurants) providing dancing or entertainment or both;

Pushcart food vendors.

(k) Educational Uses

Marine research and/or training institute for educational institution provided that water access is required for the facility or its operation.

(l) Public Service Uses (subject to St. 1956, Chapter 665, Section 2)

Public service pumping station, public service substation, automatic telephone exchange, fire station, police station;

Flood, water level, or tidal control facility;

Cable conduit, pipeline crossing, stormwater outlet, or other similar utility structure.

(m) Transportation Uses

Public transportation facility, bus station, trolley station.

(n) Place of Worship

Place of worship; monastery; convent; parish house.

(o) Exhibition and Conference Use

Exhibition hall, conference center, meeting facilities, auditorium.

(p) Art Uses/Artists' Mixed Use

(q) Fish Processing Use

Fish processing facility and accessory wholesale and retail sale of fish and fish products.

(r) Accessory and Ancillary Uses

Any of the following uses accessory or ancillary to an allowed use, subject to the limitations and restrictions of Article 10:

- (i) any use accessory or ancillary to, and ordinarily incident to, a lawful main use; provided that such use is not specifically forbidden in the district; and provided further that any such use shall be subject to the same restrictions, conditions, limitations, provisos and safeguards as the use to which it is accessory;
- (ii) an office, within a main building, of an accountant, architect, attorney, dentist, physician, or other professional person who resides in such building;
- (iii) an occupation for profit customarily carried on in a dwelling unit by a person residing therein provided that such occupation is carried on in a main building and requires only equipment ordinarily incident to a dwelling unit and that no nonresident help is employed and that there is no trading in merchandise;
- (iv) the keeping of marine life or laboratory animals incidental to a lawful educational, research center, aquarium, or institutional use;

- (v) as accessory uses to hotel uses, restaurants, conference facilities, retail and service establishments serving guests and visitors and other uses incidental to the operation of a hotel;
- (vi) as accessory uses to research center uses, restaurant, office, and other uses incidental to the operation of such research center uses;
- (vii) the storage of flammable liquids and gases incidental to a lawful use;
- (viii) permanent dwellings for personnel required to be resident on a Lot for the safe and proper operation of a lawful main use;
- (ix) day care center;
- (x) health club facility, tennis court, swimming pool.

4. Conditional Uses. Within the Fort Point Waterfront except as otherwise provided in this Section 42E-21, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use, specified in this Subsection 4, unless the granting of a permit for any use so specified is authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the regulations set forth in this Subsection 42E-21.4, or allowed by the Zoning Commission in its approval of a Development Plan for a PDA. To the extent that any use which is approved under a Development Plan for a PDA is a conditional use, either under this Article or under any other provision of the Code, the approval of the Boston Redevelopment Authority and the Zoning Commission of such Development Plan shall constitute approval of such conditional use and no further approval thereof shall be required from the Board of Appeal.

(a) Open Space/Recreational Uses

Recreational building (other than a nonprofit sailing center, other public recreational facility operated by a nonprofit organization, or publicly-accessible garden conservatory or botanical garden) on an Open Space area that is necessary and/or appropriate to the enhanced enjoyment of the particular Open Space area and is open to the public.

(b) Take-out Restaurant

In a structure, sale over the counter, not wholly incidental to a local retail business or restaurant use, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.

(c) Parking Uses

Parking garage or parking lot.

5. Forbidden Uses. Any use not specified as an allowed or conditional use in this Section 42E-21, except for such nonconforming uses as may be allowed to continue under the provisions of Article 9, shall be forbidden uses in the Fort Point Waterfront. Without limitation, uses described in Use Items No. 34A and No. 38A of Table A of Section 8-7 shall be forbidden uses in the Fort Point Waterfront. In addition, and notwithstanding any contrary provision hereof, any use of a floating structure, other than for a Water-Dependent Use, is forbidden in the Fort Point Waterfront.

(↑ As amended on February 22, 1991, September 30, 1993, October 6 and December 19, 1994, November 21, 1996, and July 31, 1997.)

MISCELLANEOUS PROVISIONS

SECTION 42E-22. **Regulations.** The Boston Redevelopment Authority may promulgate regulations to administer this Article.

SECTION 42E-23. **Rights to Navigation.** No provision of this Code shall be construed as a limitation upon the navigational rights of vessels or upon the regulation thereof by the United States.

SECTION 42E-24. **Severability.** The provisions and requirements of this Article are severable, and if any such requirements or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision or requirement of this Article.

SECTION 42E-25. **Definitions.** Words and phrases defined in Appendix A to this Article, when capitalized in this Article, shall have the meanings set forth in said Appendix A.

SECTION 42E-26. **Appendices.** The following appendices are hereby made part of this Article:

Appendix A - Definitions.

Appendix B - Water-Dependent Uses and Facilities of Public Accommodation.

APPENDIX A to ARTICLE 42E

Definitions

For the purposes of Article 42E only, the following words and phrases, when capitalized, shall have the meanings indicated. Words and phrases not herein defined but defined Article 2 shall have the meanings indicated in Article 2.

1. "Adjusted Income" is defined as it is in 24 CFR 813.102, as amended, or as set forth in regulations adopted in accordance with Subsections 42E-5.
2. "Affordable" means, in the case of an owner-occupied dwelling unit, requiring the expenditure by a Low-Income, Moderate-Income, or Upper Moderate-Income Household for mortgage and insurance payments, real estate taxes, and condominium fees of not more than thirty percent (30%) of its Adjusted Income to occupy the unit, and, in the case of a renter-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household or Upper-Moderate Income Household for rent payments of not more than thirty percent (30%) of its Adjusted Income to occupy the unit.
3. "Annual Income" is defined as it is in 24 CFR 813.106, as amended, or as set forth in regulations adopted in accordance with Subsections 42E-5.
4. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 42E-4 or the authorized agent of any such person or entity.
5. "Art use" means the creation, manufacture, or assemblage of visual art, including two- or three-dimensional works of fine art or craft, or other fine art objects created, manufactured, or assembled for the purpose of sale, display, commission, consignment, or trade by artists or artisans; or classes held for art instruction.
6. "Artists' mixed-use" means the use of all or a portion of a building for both art use and habitation.
7. "Boat Rental Establishment" means any use or establishment that involves the renting, hiring, or instruction in the use of any sailboat, rowboat, or other Recreational Vessel that does not require an operator's license by the United States Coast Guard or the conferring of seasonal use privileges in a fleet of such Recreational Vessels.

APPENDIX A to ARTICLE 42E (continued)

8. "Building Height," notwithstanding the provisions of clause (23) of Section 2-1, means (a) for a flat roof, the vertical distance from the grade to the top of the highest point of the roof beams excluding mechanical roof structures and penthouses normally built above the roof and not used or designed to be used for human occupancy, and (b) for a pitched roof, the vertical distance from grade to the lower (i) of the mean level of the highest gable or of the slope of a hip roof or (ii) of the top of the structure of the highest occupied floor. A mansard roof shall be considered a flat roof. For Piers, grade shall be measured from the top of the deck of the Pier. In the Fort Point Waterfront, mechanical roof structures and penthouses normally built above the roof and not used or designed for human occupancy shall be excluded in calculating Building Heights.
9. "Bulkhead" means a vertical structure used to create an edge between the land and the water against which Vessels can be placed to unload or engage in other activities.
10. "Chapter 91" means M.G.L. Chapter 91 and implementing regulations, codified as of the effective date of this Article at 310 C.M.R. 9.00, as said statute and regulations may, from time to time, be amended.
11. ["Development Plan"]. Deleted on May 9, 1996 by Text Amendment No. 229.
12. "End" of a Pier means the edge of the Pier that is most nearly opposite the edge connecting the Pier with dry land and most nearly parallel to the 1880 Harbor Line or, if the 1880 Harbor Line is not applicable, the general direction of the shoreline.
13. "Existing Pier" means a Pier existing as of the date of the first notice of hearing for the adoption of this Article before the Zoning Commission.
14. "Facility of Public Accommodation" means a use so described in Appendix B.
15. "FAR" means floor area ratio, as defined in Section 2-1, subject to the provisions of Sections 15-1 and 42E-16.4 regarding calculation of the area of the Lot.
16. "Filled Tidelands" means former submerged lands and tidal flats which are no longer subject to tidal action due to the presence of fill.
17. "Flowed Tidelands" means present submerged lands and tidal flats which are subject to tidal action at the time of license application under Chapter 91.

APPENDIX A to ARTICLE 42E (continued)

18. "Fort Point Waterfront" means the area within the boundaries established on the map entitled "Map 4A Harborpark District: Fort Point Waterfront" of the series of maps entitled "Zoning Districts City of Boston," as amended.
19. "Harborpark District" means the Charlestown Waterfront, the Fort Point Waterfront, the North End/Downtown Waterfront, and the Dorchester Bay/Neponset River Waterfront.
20. "Harborpark District Plan" means the plan of the same name adopted or to be adopted by the Boston Redevelopment Authority.
21. "High/Low Tide Line" means the present arithmetic mean of the water heights observed at high or low tide, as applicable, over a specific 19-year Metonic Cycle (the National Tidal Datum Epoch) and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.
22. "Historic Building" means any building listed from time to time in the Massachusetts Register of Historic Places.
23. "Index" means Consumer Price Index for all Urban Consumers, Boston, MA, all items - Series A (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor or, in the event such Consumer Price Index ceases to be published by the United States Department of Labor, a similar published index measuring consumer price levels in the Boston Metropolitan Area, as designated by the Boston Redevelopment Authority.
24. "Landmark" means any building or structure from time to time designated a landmark pursuant to Chapter 772 of the Acts of 1975, as amended.
25. "Lot", notwithstanding the provisions of clause (26) of Section 2-1, means a parcel of land, including land under water (a) whether or not platted, (b) in common control and combined for a single Proposed Project or in single ownership, and (c) except as otherwise provided in Section 42E-14, not divided by a street.
26. "Lot Area", notwithstanding the provisions of clause (27) of Section 2-1, means the horizontal area of the Lot exclusive (a) of any area in a street, (b) of any area in a private way devoted to public use by motor vehicles, (c) of any fresh water area more than ten (10) feet from the shoreline, and (d) of any salt water area below the High Tide Line. The foregoing notwithstanding, (x) the horizontal area of any Pier located in the Lot and (y) a private way open to vehicles for the purpose of accessing the Lot only and a street or private way open only to pedestrians and emergency vehicles shall be included in the Lot Area. Further,

APPENDIX A to ARTICLE 42E (continued)

if a Proposed Project shall result in a net reduction in the horizontal area of Piers on the Lot, then Lot Area shall be computed on the basis of the horizontal area of said Piers as of the commencement of the Proposed Project.

27. "Low-Income Household" means any household whose Annual Income does not exceed fifty percent (50%) of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
28. "Main Shipping Channel" means the shipping channel for deep draft vessels in the Boston Inner Harbor as depicted by dashed lines on that certain chart issued by National Oceanic and Atmospheric Administration as chart number 13272 and entitled "Boston Inner Harbor," 39th Edition, dated November 24, 1984.
29. "Marina Amenity Uses" means those uses identified as such in Subsection 42B-14.5.
30. "Maritime Economy Reserve Subdistrict" means a subdistrict subject to the provisions of this Code applicable within an MER district.
31. "Median Gross Income" is defined as it is by the United States Department of Housing and Urban Development, pursuant to 24 CFR Section 813.102, as amended, or as set forth in regulations adopted in accordance with Subsections 42E-3 or 42E-4.
32. "Moderate-Income Household" means any household whose Annual Income does not exceed eighty percent (80%) of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
33. "Natural High/Low Tide Line" means the historic high/low tide line that would be observed except for alteration of the shoreline by filling, dredging, or impounding.
34. "Open Space" has the meaning set forth in Section 42E-6.
35. "Pedestrian Access Network" means a pedestrian network of a kind and to a degree that is appropriate for the site and consisting of, at a minimum:
 - (i) walkways and related facilities along the entire length of the shoreline, and along the edges of any Piers or filled areas, which walkways shall be no less than twelve (12) feet in width; and

APPENDIX A to ARTICLE 42E (continued)

- (ii) appropriate connecting walkways that allow pedestrians access to shoreline and Pier walkways from public ways or other Public Access Facilities to which any Commonwealth Tidelands or Private Tidelands on the site are adjacent.
- 36. "Pier" means any structure that extends seaward of the High Tide Line, but excluding any floating structure.
- 37. "Pierhead Line" means the seaward limit of Pier construction as established in applicable law of the Commonwealth of Massachusetts.
- 38. "Private Tidelands" has the meaning ascribed in Chapter 91.
- 39. "Proposed Project" means the substantial demolition, erection, or extension of any structure or part thereof, or the change or extension of use of any structure or land (including submerged land and Tidelands), for which the Applicant is required to obtain a building or use permit. A Proposed Project may be built in phases and may include separate or connected building elements on the same Lot.
- 40. "Public Access Facility" means a facility for pedestrian access to and/or along the waterfront, as provided in clauses (a) and (b) of Subsection 42E-5.
- 41. "Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the Commonwealth of Massachusetts, or one or more political subdivisions of the Commonwealth, or of the United States. For the purposes of this article, the Commonwealth's proprietary interest in Tidelands shall not constitute "ownership" by a Public Agency.
- 42. "Public Boat Ramp" means any ramp structure that provides public access to or egress from the water for Vessels.
- 43. "Recreational Marina" means any arrangement of docks, slips, Piers, pilings, moorings, or other facilities in or adjacent to the water, for use primarily by Recreational Vessels, including, but not limited to, any such facility associated with a yacht club or boat club.
- 44. "Seasonal Dry Storage" means the storage of Recreational Vessels on land for periodic use in the water during the active boating season, generally from April through October.
- 45. "Sides" of a Pier means the edges of the Pier other than the edge connecting the Pier with dry land and other than the End of the Pier.

APPENDIX A to ARTICLE 42E (continued)

46. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the last occupied floor of a Proposed Project shall not exceed the specified height limit for the applicable district or subdistrict by more than the lesser of (i) nine (9) feet or (ii) two-thirds of the average floor-to-floor height of the building, excluding the ground floor. "Substantial Accord" shall not be interpreted as allowing a Proposed Project to exceed the maximum permitted FAR.
47. "Tidelands" means present and former submerged lands and tidal flats lying between the Natural High Tide Line and the seaward limit of state jurisdiction.
48. "Underlying Zoning" means all zoning regulations, with the exception of this article, which are contained in this code.
49. "Upper-Moderate Income Household" means any household whose Annual Income does not exceed 110% of the Median Gross Income of Households in the Boston Standard Metropolitan Statistical Area.
50. "Vessel" means any watercraft, including, but not limited to, a Commercial Vessel or Recreational Vessel, but not including any floating structure permanently moored or attached to land or a Pier.
51. "Vessel, Commercial" means any Vessel used for the principal purpose of engaging in a water-related commercial activity, including, but not limited to, charter boat, fishing boat, tug boat, cruise boat, freighter, or barge.
52. "Vessel, Recreational" means any Vessel used principally for recreational purposes.
53. "Water-Dependent Commercial Use" means a use described in Subsection 42D-3.1(b).
54. "Water-Dependent Use" means those uses described as such in Appendix B to this Article 42E.
55. "Water-Dependent Facility of Public Accommodation" means a Facility of Public Accommodation that is also a Water-Dependent Use.
56. "Waterfront Yard Area" has the meaning ascribed in Section 42E-7.
57. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

APPENDIX B to ARTICLE 42E

Water-Dependent Uses and Facilities of Public Accommodation

Water-Dependent Uses

- Water-Dependent industrial uses;
- Facilities for fishing, swimming, diving, and other water-based recreational activities;
- Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;
- Aquariums and other cultural, educational, research, or training facilities dedicated primarily to marine purposes or water-oriented exhibits;
- Aquaculture facilities;
- Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;
- Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, water deflectors, and the like;
- Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;
- Marinas, boat basins, Boat Rental Establishments, boating or sailing school, channels, storage areas, and other facilities and establishments for commercial or recreational boating.

Facilities of Public Accommodation

A "Facility of Public Accommodation" means a facility, including a commercial facility, at which goods or services are made available directly to the general public. Facilities of Public Accommodation include, but are not limited to:

- Lunch room, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, provided that there is no dancing nor entertainment other than phonograph, radio, and television;
- Place for sale and consumption of food and beverages (other than drive-in restaurant) providing dancing or entertainment or both, provided that such establishment is customarily open to the public at large and does not exclude any minor by reason of age as a prevailing practice;
- Theater;
- Lobbies and public areas of a hotel or motel;
- Library, museum, aquarium, educational, historical, or cultural institution open to the public;

APPENDIX B to ARTICLE 42E (continued)

- Adult education center, community center, or other interior space dedicated to the programming of community meetings, informational displays, special recreational events, or other public activities;
- Store primarily serving the local retail business needs of the residents of the neighborhood, including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, drugs, tobacco products, clothing, dry goods, books, flowers, paint, hardware, and minor household appliances, but not including packaged alcoholic beverages;
- Department store, furniture store, general merchandise mart, or other store serving general retail business needs of a major part of the city, including accessory storage;
- Barber shop, beauty shop, shoe repair shop, self-service laundry, pick-up and delivery station of laundry or dry-cleaner, or similar use;
- Tailor shop or hand laundry;
- Caterer's establishment, photographer's studio, upholsterer's shop, carpenter's shop, or electrician's shop;
- Day care facility;
- Sports or physical fitness facility open to the public; and
- Interior facility for waterborne public transportation facilities, recreational marina, boat rental establishment, recreational sailing or boating school, or other recreational boating facility or establishment.

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↓ARTICLE 42F

HARBORPARK DISTRICT

CHARLESTOWN NAVY YARD

(↓Article inserted on December 21, 1990*)

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*Date of public notice: November 19, 1990 (see St. 1956, c. 665, s. 5)

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(Editor's Note: This table of contents is added for the convenience of the user. It has not been adopted as part of this Article.)

SECTION 42F-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the Charlestown Navy Yard within the Harborpark District as required by the provisions of the Harborpark Interim Planning Overlay District, Article 27C of this Code. Together with Articles 42A, 42B, and 42E, this Article establishes the Harborpark District. The goals and objectives of this Article and the Harborpark District Plan are to protect the Harborpark District from inappropriate land and water uses; to promote balanced growth along Boston's shoreline; to allow the waterfront to be used as a public resource and thereby to extend its use and benefit to the greatest number of people; to preserve and protect public open space and beach area within the harbor area; to promote public access to the waterfront; to promote residential and mixed-use commercial activities compatible with adjacent areas; to promote the economic growth and development of water-dependent and water-related commercial activity; to protect the working waterfront and preserve areas for water-dependent uses; to promote public waterborne transportation; and to promote uses which integrate uses, activities, and physical connections between the harbor and its surrounding neighborhoods.

SECTION 42F-2. Recognition of the Harborpark District Plan. In accordance with Section 27C-16 of this Code, which required production of comprehensive planning policies, development controls, and design guidelines for the Harborpark District, the commission hereby recognizes the Harborpark District Plan as the general plan for the Charlestown Navy Yard within the Harborpark District. The Harborpark District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Charlestown Navy Yard within the Harborpark District. This Article is an integral part of and one of the means of implementing the Harborpark District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 42F-3. Physical Boundaries. The provisions of this Article are applicable only in the Charlestown Navy Yard Subdistrict of the Harborpark District. The boundaries of the Charlestown Navy Yard and its subdistricts are as shown on the map entitled "Map 2C Harborpark District: Charlestown Waterfront (supplemental to 'Map 2 Charlestown')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 42F-4. Applicability. This Article together with the rest of this code constitutes the zoning regulation for the Charlestown Navy Yard Subdistrict of the Harborpark District and applies to the use or occupancy of any structure or land (including submerged land and Tidelands) and the erection, reconstruction, extension, or alteration of any structure or part thereof as specified in Section 4-1 regarding the conformity of structures and land to this code. Exceptions to the provisions of this Article, pursuant to Article 6A, shall not be available except to the extent expressly provided in this Article or Article 6A. Except where specifically otherwise indicated in

this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 24, inclusive, of this Code. Where conflicts exist between the provisions of this Article, and the remainder of the Code, the provisions of this Article shall govern. The following Proposed Projects, however, are exempt from the provisions of this Article and are governed by the rest of this Code.

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.

TIDELANDS REGULATIONS

↓SECTION 42F-5. **Chapter 91 Requirements.** In accordance with Chapter 91 of the General Laws of Massachusetts ("Chapter 91") and the regulations promulgated thereunder, certain Projects (as that term is defined below) located in Tidelands require a license ("Chapter 91 License") from the Commonwealth's Department of Environmental Protection ("DEP"). Section 18 of Chapter 91 requires that the planning board of a municipality in which a Project requiring a Chapter 91 license is located (i.e., the Boston Redevelopment Authority, in Boston) submit a written recommendation ("Section 18 Recommendation") stating whether the planning board believes the Project would serve a proper public purpose and would not be detrimental to the public's rights in Tidelands (the "Section 18 Standard"). Such a Section 18 Recommendation with respect to a Project requiring a Chapter 91 License and located in the Harborpark District shall be made by the Boston Redevelopment Authority in accordance with the provisions of Subsection 1 of this Section 42F-5. For the purposes of this Section 42F-5 only, the term "Project" shall mean a development, activity, or change of use requiring a Chapter 91 License.

1. Determination of Proper Public Purpose. The Boston Redevelopment Authority, in making a Section 18 Recommendation regarding a Project located in the Charlestown Navy Yard Subdistrict of the Harborpark District, shall determine whether such Project serves a proper public purpose and would not be detrimental to the public's rights in Tidelands. The Boston Redevelopment Authority shall base such determination on the conformity of the Project to the provisions of Subsections 2 through 9 of this Section, and on the extent to which the Project reasonably and appropriately preserves and enhances the public's rights in Tidelands including, without limitation, the public's:
 - (a) visual access to the water, whether such Project is for a Water-Dependent or non-Water-Dependent Use on Private or Commonwealth Tidelands;
 - (b) rights to fishing, fowling, and navigation and the natural derivatives thereof, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Private or Commonwealth Tidelands;
 - (c) physical access to and along the water's edge for recreation, commerce, and other lawful purposes, and interest in public recreational opportunities at the water's edge and open space for public use and enjoyment, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Commonwealth Tidelands;
 - (d) interest in the preservation of the historic character of the Project's site;

- (e) interest in industrial and commercial waterborne transportation of goods and persons;
- (f) interest in repair and rehabilitation of dilapidated piers that blight the Harborpark District and limit public access; and
- (g) interest in safe and convenient navigation in Boston Harbor, including without limitation:
 - (i) navigation by water transportation Vessels, such as ferries, water taxis, water shuttles, or commuter vessels, including, without limitation, appropriate and convenient navigation by such Vessels outside of the Main Shipping Channel and other established channels;
 - (ii) navigation by deep draft Vessels, including without limitation, appropriate navigation in the Main Shipping Channel and other established channels and the requirements of turning, anchorage, and approaches to deep water piers and berths;
 - (iii) navigation by Recreational Vessels and small Commercial Vessels outside of the Main Shipping Channel and other established channels as necessary or convenient for such vessels to avoid interference with water transportation Vessels and deep draft shipping and as otherwise required for the purposes of harbor traffic management; and
 - (iv) navigation, as appropriate to the site, by U.S. Coast Guard, U.S. Naval, police, fire, and other public safety Vessels.

2. Public Access to the Waterfront and Open Space. Public access to the waterfront and Open Space is a central policy of the Harborpark District Plan. Pursuant to this policy, the Boston Redevelopment Authority shall not make a positive Section 18 Recommendation with respect to a Project that the Boston Redevelopment Authority determines will significantly interfere with public rights to walk or otherwise pass freely on Commonwealth Tidelands for purposes of commerce, recreation, and all other lawful activities; or on Private Tidelands for purposes of fishing, fowling, navigation, and the natural derivatives thereof. The Boston Redevelopment Authority shall find that the Section 18 Standard is not met if the Project does not comply with the following public access conditions:

- (a) To the extent that the Project site includes Flowed Private Tidelands, the Project shall allow continuous, on-foot, lateral passage by the public in the exercise of its rights therein, wherever feasible; any Pier,

wharf, groin, jetty, or other structure on such Tidelands shall be designed to minimize interference with public passage, either by maintaining at least a five-foot clearance above the ground along the high water mark, by providing a stairway for the public to pass laterally over such structures, or by other means of lateral access substantially consistent with the foregoing; where obstruction of continuous access below the high water mark is unavoidable, the Project shall provide free lateral passage to the public above said mark in order to mitigate interference with the public's right to pass freely on Flowed Private Tidelands;

- (b) To the extent that the Project site includes Flowed or Filled Commonwealth Tidelands, or Filled Private Tidelands, the Project shall include reasonable measures to provide on-foot passage on such lands for the public in the exercise of its rights therein, in accordance with the following provisions:
 - (i) if the Project is not a Water-Dependent Use Project, said Project shall provide a public Pedestrian Access Network;
 - (ii) if the Project is a Water-Dependent Use Project, the Project shall provide for public passage by such means as are consistent with the need to avoid undue interference with the Water-Dependent Use or Uses in question and to avoid any safety hazard to people working on or visiting the Project site; measures which may be appropriate in this regard include, but are not limited to, allowing the public to pass laterally along portions of the Project shoreline or transversely across the site to a point on the Project shoreline;
- (c) All Open Space areas established pursuant to Section 42F-6 located on Commonwealth Tidelands and all Public Access Facilities described in paragraphs (a) and (b) of this Subsection 2 shall be open and accessible to the public twenty-four (24) hours a day. No gates, fences, or barriers may be placed on said Public Access Facilities or Open Space in a manner that would impede or discourage the free flow of pedestrian movement thereon. The foregoing shall not be deemed to prohibit the placing of temporary barriers as required in emergencies or in connection with construction, maintenance of structures or essential services, or the like, provided that interference with pedestrian access and passage is minimized to the extent reasonably practicable and consistent with public safety and that such barriers are in place no longer than necessary. All such pedestrian access facilities shall be Accessible to Physically Handicapped Persons as those terms are defined in

Section 30-2. Active pedestrian use of such Open Space areas and pedestrian access facilities shall be encouraged on a year-round basis, particularly for water-related activities, through such means as appropriate ground-level uses of adjacent buildings and facilities and amenities designed to be attractive to pedestrians. Maintaining, cleaning, landscaping, and managing such Open Space areas and pedestrian access facilities shall at all times be the responsibility of the Chapter 91 licensee of the Project. The Applicant for any Project subject to or electing to comply with Large Project Review shall include in the urban design component of its Draft Project Impact Report, submitted pursuant to Large Project Review, an Open Space and Public Access Plan, including plans, drawings, specifications, descriptions of proposed uses, and descriptions of proposed management measures and access-related rules and regulations, if any, sufficient to permit the Boston Redevelopment Authority to determine the conformity of the Project to this Subsection 2 and Section 42F-6, and to make a Section 18 Recommendation.

(d) Any Project required to provide Public Access Facilities in accordance with paragraph (b), above, shall encourage public patronage of such facilities by placing and maintaining adequate signage at all entryways and at other appropriate locations on the site; said signage shall:

- (i) conform to Article 11, Signs, of this Code;
- (ii) conform, as applicable, to design guidelines for Harborwalk signage to be issued as regulations by the Boston Redevelopment Authority; and
- (iii) include at least one sign, conforming to such design guidelines and placed in a prominent location, which advises the public of its access rights and discloses whatever access-related rules and regulations are in effect, if any.

3. Creation of Housing on Land not Owned by a Public Agency. In a Project to construct ten (10) or more units of housing in the Charlestown Navy Yard Subdistrict of the Harborpark District on a Lot not owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least ten percent (10%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston

Redevelopment Authority, to the extent that such ten-percent requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.2, and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date.

4. Creation of Housing on Land Owned by a Public Agency. In a Project to construct four (4) or more units of housing on a Lot that is owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed; which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least twenty-five percent (25%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent such twenty-five percent (25%) requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by the Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.5, and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date.

Anything to the contrary herein contained notwithstanding, the provisions of this Subsection 4 and of Subsection 3 of this Section 42F-5 shall apply to any Proposed Project for residential uses located in the Charlestown Navy Yard Subdistrict.

5. Construction of Affordable Housing Off Site. The following provisions shall govern the construction of Affordable dwelling units off site in satisfaction of the requirements of Subsections 3 and/or 4 of this Section:
 - (a) Subject to the approval of the Boston Redevelopment Authority, if a Project is located in the Charlestown Navy Yard Subdistrict, the Applicant may fulfill the obligations of Subsections 3 and/or 4 of this Section by creating housing off site in the Charlestown Navy Yard

Subdistrict or the Charlestown neighborhood. In determining whether to approve the construction of Affordable dwelling units off site, the Boston Redevelopment Authority shall take into account the number of Affordable dwelling units which have been created in the Charlestown Navy Yard or Charlestown Neighborhood, since the effective date of this Article. The Boston Redevelopment Authority shall base its approval on the standard that a minimum of twenty-five percent (25%) of the total number of housing units within the Charlestown Navy Yard Subdistrict be Affordable.

For the purposes of this Subsection 5 and the preceding Subsections 3 and 4, "housing" shall mean those uses identified in Section 42F-14.4(d).

6. Provision for Water Transportation Facilities. To promote an effective water transportation system and to ensure use of the waterfront and full access to recreational, commuting, and economic activities, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met with respect to a Project located in the Charlestown Navy Yard unless the Project conforms to the requirements for water transportation facilities set forth below, as applicable:
 - (a) Water Transportation Facility Requirement. In making a Section 18 Recommendation with respect to such a Project, the Boston Redevelopment Authority shall consider the extent to which provision is made on the Project site for waterborne passenger transportation facilities, including, without limitation, terminals and landings for water ferries, water shuttles, or water taxis, and free public landings, as appropriate to the scale, use, and location of the Project and in accordance with the water transportation guidelines of the Harborpark District Plan.
 - (b) Shoreline Construction. In order to provide appropriate docking areas for emergencies and other harbor activities, all portions of the shoreline of a Project consisting of seawalls or bulkheads, but not including Piers, which are restructured and which abut waters accessible by Vessels shall be constructed, to the extent reasonably practicable, in such a manner as can accommodate such Vessels alongside for dockage.
7. Uses Allowed in Tidelands Proposed to be Filled and on Floating Structures. No portion of a Project located on Tidelands which are filled after the date of the first notice of hearing before the Zoning Commission on this Article shall be erected, used, or arranged or designed to be used (a) except for a Water-Dependent Use otherwise allowed or conditionally

permitted for such Project, subject to the provisions of Article 6; or (b) as otherwise provided below. In making a Section 18 Recommendation with respect to a Project involving such new fill, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless such new fill is limited to the extent reasonably practicable by measures such as substituting pile-supported or floating structures for new fill or relocating the use to a position above the High Tide Line. The foregoing shall not, however, prohibit or limit the use of new fill the purpose of which is to eliminate irregularities in or repair previously altered portions of the shoreline included in the Project, provided that such new fill replaces previously authorized fill elsewhere along such shoreline on a one-to-one square foot basis (new fill to removed fill). The foregoing shall also not prohibit or limit the use of new fill the purpose of which is to accommodate mechanical or structural elements of the Project that enter the seabed, such as, without limitation, elevator shafts, ventilation shafts, utility conduits, piles, or the like, provided that such fill is limited to that reasonably required under the circumstances and provided, further, that all such mechanical elements, structural elements, and fill are wholly contained within the edges of a Pier. Piles are not considered "fill" for the purposes of this Article. New fill, in any event, is prohibited in any area where Pier construction or extension is prohibited by this Code.

No floating structure, other than a Vessel, shall be used or arranged or designed to be used except for a Water-Dependent Use otherwise allowed for the location of such structure or conditionally permitted, subject to the provisions of Article 6.

8. Regulations Governing Piers and Other Structures in the Charlestown Navy Yard. Within the Charlestown Navy Yard no portion of any Pier other than an Existing Pier shall be erected, used, or arranged or designed to be used except as publicly Accessible Open Space or for a Water-Dependent Use otherwise allowed, or conditionally permitted subject to the requirements of Article 6, for the location pursuant to this Article.

(↑As amended on May 9, 1996.)

REGULATIONS APPLICABLE IN THE CHARLESTOWN NAVY YARD

SECTION 42F-6. Open Space Requirements. At least fifty percent (50%) of the total Lot Area of all Lots included within the Charlestown Navy Yard Subdistrict, excluding the Historic Monument Area, shall be devoted to Open Space. The Department of Inspectional Services shall not issue a building permit with respect to a Proposed Project within the Charlestown Navy Yard Subdistrict, excluding the Historic Monument Area, involving new construction not wholly contained within the envelope of an existing building without first receiving a certification by the Boston Redevelopment Authority that such Proposed Project includes or provides for sufficient Open Space in the context of existing and planned development contemplated in the Charlestown Navy Yard Master Plan and this Article, so that the foregoing fifty percent (50%) Open Space requirement will be met in the context of such existing and planned development.

For the purposes of this Article, the term "Open Space" shall mean land areas and areas on Piers excluding (a) any area occupied by a building or roofed structure, or otherwise enclosed; (b) any parking lot or parking area; (c) any street; (d) any private road or area devoted to motor vehicle use; (e) any salt-water area below the mean high tide line, but not the area of Piers over salt-water areas; (f) marina slips or floats or other floating structures; (g) swimming pools; and (h) tennis courts, but shall include the entire area within the National Historical Park.

The foregoing notwithstanding, the following areas shall be deemed "Open Space":

- (v) any area occupied by a building not exceeding a Building Height of fifteen (15) feet and a gross floor area of four hundred (400) square feet and reserved exclusively for use as a Water-Dependent Use or a recreational use permitted as a conditional use pursuant to Subsection 42F-14.5(a);
- (w) any area occupied by a street or private way open only to pedestrians and emergency vehicles;
- (x) any area at grade, pedestrian-accessible to members of the public twenty-four (24) hours per day, covered by a weather-protective enclosure or roof structure, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A. For the purposes of this clause (x), Open Space shall not include any such area covered by a portion of a building, which portion is used or designed to be used for human occupancy or which contains or supports mechanical equipment principally serving portions of the building other than the enclosed Open Space area;

- (y) any area, at grade, otherwise meeting the definition of Open Space, as set forth in this Section, but covered by a pedestrian skywalk or skybridge, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A;
- (z) any area beneath an archway, which archway is not less than forty (40) feet wide at grade and forty (40) feet high at its apex and open at both ends.

All Open Space areas shall be Accessible to Physically Handicapped Persons, as those terms are defined in Section 30-2. The foregoing shall not prohibit occasional access to or over Open Space by vehicles reasonably required to construct or maintain the structures or essential services on the Lot, or by vehicles required to service, load, or unload Commercial Vessels, or by emergency vehicles. However, routine access to or over Open Space areas by vehicles transporting, loading, or unloading passengers or supplies for the normal operation of buildings and uses, other than as set forth in the preceding sentence, is not consistent with the foregoing definition.

SECTION 42F-7. Waterfront Yard Area Requirements. Except as otherwise expressly provided in this Article, each Lot in the Charlestown Navy Yard Subdistrict of the Harborpark District adjacent to or including the High Tide Line or an edge of a Pier seaward of the High Tide Line shall include a Waterfront Yard Area adjacent to and landward of such High Tide Line or edge of Pier, as the case may be. The required Waterfront Yard Area shall be connected within each Lot and at the boundaries thereof so as to provide a continuous path along the waterfront, with a minimum width at the places of connection of no less than twelve (12) feet. The dimensions of the required Waterfront Yard Area are set forth in Table A of this Article.

TABLE A

Required Depth of Waterfront Yard Area

<u>Location</u>	<u>Required Setback at Shoreline, excluding Piers</u>	<u>Required Setback at Sides of Piers</u>	<u>Required Setback at Ends of Piers</u>
Charlestown Navy Yard generally	35'	12'	35'
Parcels 6 and 7	20'	20'	20'

Parcel 5: See also Subsection 42F-13.3.

The provisions of Article 6A shall be applicable to the Waterfront Yard Area requirement. The following additional provisions shall apply to the Waterfront Yard Area requirement:

1. Waterfront Yard Area Measurements. The depth of the Waterfront Yard Area shall be measured perpendicularly from the High Tide Line in the case of bulkheads, rip rap, fill, or shoreline, or from the Ends and Sides of Piers. In locating the Waterfront Yard Area in the case of bulkheads, rip rap, fill, or shoreline, the actual High Tide Line may be smoothed with such curves and chords as may be necessary to achieve a reasonably regular landward boundary; however, in no instance shall such Waterfront Yard Area be narrower than the required dimension measured from the actual High Tide Line or the seaward edge of the Pier, whichever is further seaward. For the limited purpose of applying the Waterfront Yard Area requirements of this Article, a filled area or a structure consisting of both fill and Pier, projecting seaward of the prevailing shoreline, and having the form of a wharf or Pier, shall be treated as Pier.
2. Setback Requirements. No portion of any building or structure (including, without limitation, mechanical facilities associated with a building) shall be located in any Waterfront Yard Area, except walkways, landscape furniture, guardrails, cleats, bollards, pilings, boat ramps, and other structures (a) which do not materially interfere with pedestrian use of the Waterfront Yard Area or (b) which are required for operational or safety reasons to be located at the water's edge, provided that any resulting interference with pedestrian use of the Waterfront Yard Area is minimized to the extent economically practicable.
3. Exception to Waterfront Yard Area Setback Requirement. Any building or structure used for a Water-Dependent Use, including without limitation, enclosed or covered wet dock sheds, davits, hoists, mast markers, and the structures listed in Subsection 2 above, shall be permitted within the Waterfront Yard Area as necessary to avoid interference with any direct access to the water required for such Water-Dependent Use.
4. No portion of any Waterfront Yard Area shall be located on any floating structure.

↑SECTION 42F-8. **Urban Design Guidelines.** If the Boston Redevelopment Authority determines that a Proposed Project is consistent with the Design Guidelines set forth in the Memorandum of Agreement amongst the Boston Redevelopment Authority, the General Services Administration, the Massachusetts Historic Commission, and the Advisory Council on Historic Preservation as amended from time to time, if applicable, then the Proposed Project shall be deemed to be consistent with the design guidelines established by this Section 42F-8. This Section 42F-8

establishes the following urban design guidelines for the Charlestown Navy Yard Subdistrict of the Harborpark District:

1. New development and rehabilitation shall reinforce the traditional pattern, height, and massing of the urban waterfront.
2. Buildings and spaces shall direct views and pedestrian movements towards the water.
3. Buildings on Piers shall be sited so as to reinforce the geometry of the Pier generally.
4. Inland buildings shall reinforce the vehicular street pattern and avoid continuous walls parallel to the water's edge by maintaining view and access corridors, especially at cross streets.
5. Buildings shall be sited to provide view and access corridors toward the open water and to preserve views from Public Access Facilities and Open Space areas at the Ends of Piers across the water. Open archways spanning a view corridor, which archways are not less than forty (40) feet wide at grade and forty (40) feet high at the apex and are oriented and designed to preserve the view corridor, as determined through design review, shall not be deemed inconsistent with this design guideline.
6. Building elements within the Charlestown Navy Yard shall generally step down in height toward the water's edge, except along the Little Mystic Channel.
7. Open areas and buildings at or near the Ends of Piers shall offer opportunities for public views of the water and public amenities that attract the public to the water's edge.
8. Building massing shall enhance the air flow channels created by sea breezes that are beneficial to air quality in the city.
9. Open spaces, building entrances, shopfronts, shop windows, shop entrances, terraces, gardens, arcades, and similar elements shall be designed to enhance pedestrian activity, access to, and enjoyment of the waterfront. Blank walls, without windows or entrances facing onto pedestrian areas, shall be avoided to the extent practicable in building designs.
10. Facade treatment, building materials, and design details shall complement the traditional character of Boston's historic waterfront development patterns.

11. Setbacks, corner treatments, and other design details shall be used to minimize the sense of bulk of structures, and ornamental and decorative elements appropriate to the urban and historical waterfront context are encouraged.
12. Roofs of buildings shall be designed to minimize the visibility of roof structures and penthouses normally built above the roof and not designed to be used for human occupancy.
13. A Proposed Project should promote and enhance the quality of the pedestrian environment, by means such as: (a) pedestrian pathways connecting to the waterfront and, where appropriate, linking the waterfront and mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) use of materials, landscaping, public art, signage, lighting, and furniture that enhance the pedestrian and waterfront environment; (d) pedestrian systems that encourage more trips on foot to replace vehicular trips; (e) other attributes that improve the pedestrian environment and pedestrian access to the waterfront and Boston Harbor; and (f) appropriate management and maintenance of pedestrian access within the Proposed Project.
14. In addition to the foregoing, design features of a Proposed Project shall take into consideration the special characteristics of the site and its location in the Harborpark District and shall provide opportunities for special amenities, such as panoramic views of the Harbor, and shall enhance and reinforce any historic qualities of existing structures, taking into account the design guidelines established in the Harborpark District Plan.

(↑As amended on May 9, 1996 and July 31, 1997.)

↑SECTION 42F-9. **Environmental Protection and Safety Standards for Proposed Projects.** Any Proposed Project involving new construction in the Charlestown Navy Yard Subdistrict of the Harborpark District shall conform to the environmental protection and safety standards established in this Section, to the extent economically practicable, as determined in Large Project Review.

1. Waste Handling. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include a trash compactor or comparable facility for waste disposal management in an interior location and shall provide for the maintenance and cleanliness of such facility.
2. Area for Recyclable Materials. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include an interior area for the separation, temporary storage, and collection of

recyclable materials. Such area shall be located in the vicinity of any off-street loading facility.

3. Provision of Safety Ladders. Any such Proposed Project, if adjacent to the water, shall provide a safety ladder or ladders extending from the water to an accessible area above the High Tide Line such that there shall be one safety ladder located approximately every one hundred (100) feet along those portions of the waterfront occupied by seawalls, piers, wharves, or other structures otherwise inaccessible to a person in the water. The foregoing notwithstanding, a safety ladder shall not be required in a location in which the ladder would unreasonably interfere with docking facilities or other Water-Dependent Use, provided that safety ladders are placed at intervals most closely approximating one hundred (100) feet and not so interfering.

(↑As amended on May 9, 1996.)

↓SECTION 42F-10. **Off-Street Parking.** Within the Charlestown Navy Yard Subdistrict, except in the Historic Monument Area, no off-street parking facilities shall be required for any Proposed Project with a gross floor area of less than ten thousand (10,000) square feet. For any Proposed Project with a gross floor area of ten thousand (10,000) or more square feet, the Applicant shall include in its Project Impact Report, prepared for Large Project Review, an analysis of the parking requirements of the Proposed Project.

The provisions of the foregoing paragraph notwithstanding, within the New Development Area on Parcels 4, 6, and 7 and Pier 5, off-street parking facilities shall be provided as follows: (a) on Parcel 4, no less than 175 and no more than 250 parking spaces shall be provided, for uses permitted on Parcel 4 and up to an additional 50 parking spaces shall be provided for the adjacent affordable housing building such that a total of fifty spaces shall be available for the use of occupants of the adjacent affordable housing building, including both spaces on the adjacent affordable housing site and spaces within the hotel site; but if an aquarium is not developed as set forth in Table E, parking shall be provided as needed to satisfy parking needs for the Proposed Project on Parcel 4, as determined by the Boston Redevelopment Authority in its Adequacy Determination for the Proposed Project, issued pursuant to Large Project Review; (b) on Parcels 6 and 7 combined, no less than 0.5 parking spaces per 1,000 square feet of gross floor area (excluding off-street parking) shall be provided, but in no event shall more than 1,200 off-street parking spaces be provided; (c) on Parcel 5, if an aquarium is not developed as set forth in Table E, 0.9 parking spaces per 1,000 square feet of gross floor area (excluding off-street parking) shall be provided; and (d) on Pier 5, no more parking than is needed to satisfy parking needs for the Proposed Project on Pier 5, as determined by the Boston Redevelopment Authority in its Adequacy Determination for the Proposed Project, issued pursuant to Large Project Review.

(↑As amended on May 9, 1996.)

SECTION 42F-11. Transportation Access. In order to ensure adequate access and egress to and from the New Development Area of the Charlestown Navy Yard, measures shall be taken such as widening Gate 5, adding a new Gate 6, or other measures of comparable effectiveness in providing such access and egress as may be permitted by law.

↑**SECTION 42F-12. Off-Street Loading.** Within the Charlestown Navy Yard Subdistrict, except in the Historic Monument Area, no off-street loading facilities shall be required for any Proposed Project with a gross floor area of less than ten thousand (10,000) square feet. For any Proposed Project with a gross floor area of ten thousand (10,000) or more square feet, the Applicant shall include in its Project Impact Report, prepared for Large Project Review, an analysis of the loading requirements of the Proposed Project and of the impacts of projected loading activities, together with a description of any off-street loading facilities required to meet those requirements and to mitigate, to the extent economically practicable, projected impacts, and the Boston Redevelopment Authority shall determine the adequacy of such proposed loading facilities in accordance with Large Project Review.

(↑As amended on May 9, 1996.)

SECTION 42F-13. Charlestown Navy Yard Dimensional Regulations. The Charlestown Navy Yard Subdistrict includes: the New Development Area (including Parcel 4, Parcel 5, Parcel 6, and Parcel 7; and Pier 5, Pier 6, Pier 7, Pier 8, and Pier 9; and the Housing Priority Area); the Historic Monument Area; the National Historical Park; and Shipyard Park.

The following provisions shall be applicable within the Charlestown Navy Yard Subdistrict:

1. New Development Area: Density. Because of the absence of conventional parcels of land and the policy of guiding development in the New Development Area in accordance with the Charlestown Navy Yard Master Plan, building density in the New Development Area shall be regulated through limitations on gross floor area. The Department of Inspectional Services shall not issue a certificate of occupancy with respect to a Proposed Project or portion thereof in the New Development Area unless the Boston Redevelopment Authority has certified that such issuance shall not cause any of the following occupancy limitations to be exceeded. The total occupancy allowed for each location indicated in Table B of this Article shall be the gross floor area of buildings in such location in existence as of the effective date of this Article plus the additional gross floor area for such location indicated in the column headed "Maximum New Square Feet of Gross Floor Area." However, with respect to: (a) Parcels 6 and 7, no

more than one-half of such Maximum New Square Feet of Gross Floor Area shall be occupied prior to January 1, 1994; and (b) Pier 5, none of such Maximum New Square Feet of Gross Floor Area shall be occupied prior to January 1, 1994.

TABLE B

Occupancy Limits* for New Development Area

<u>Location</u>	<u>Maximum New Square Feet of Gross Floor Area*</u>
(a) Parcel 4	440,000
(b) Parcel 5	325,000
(c) Parcels 6 and 7	1,625,000 **
(d) Pier 5	245,000 **
(e) Piers 6, 7, 8, and 9	28,000
(f) Housing Priority Area	144,000

* The Maximum New Square Feet of Gross Floor Area allowed before January 1, 1994, may also be constructed and occupied after January 1, 1994.

** Provided that no more than 550,000 square feet, not including off-street parking, shall be occupied prior to January 1, 1994. Parking uses shall be included in the computation of total square feet of floor area of occupancy on Parcels 6 and 7 whether such uses are located above or below grade. Of the 1,625,000 square feet of gross floor area of occupancy available within the stated limit, 450,000 square feet shall be reserved exclusively for parking and shall not be available for other uses.

*** Provided that none of such area on Pier 5 shall be occupied prior to January 1, 1994.

2. New Development Area; Building Height. The maximum allowed Building Heights for each portion of the New Development Area shall be as set forth in Table C of this Article.

TABLE C

**Maximum Allowed Building Heights
in the New Development Area***

<u>Location</u>	<u>Maximum Allowed Building Height</u>
(a) Parcel 4	90'/135' ***
(b) Parcel 5	110'
(c) Parcel 7	155'
(d) Parcel 6	125'
(e) Pier 5	55'/75' **
(f) Pier 6	35'
(g) Pier 7	35'
(h) Pier 8	35'
(i) Pier 9	35'
(j) Housing Priority Area (Buildings 40, 42, 103, 104, 197)	65'

* Building heights in the New Development Area are also subject to the Design Guidelines set forth in the Memorandum of Agreement for the New Development Area amongst the Boston Redevelopment Authority, the General Services Administration, the Massachusetts Historic Commission, and the Advisory Council on Historic Preservation as amended from time to time.

** 55' for 150' back from the end of the Pier, 75' for the remainder of the Pier.

*** 90' for 50' back from the Housing Priority Area, 135' for the remainder of Parcel 4.

3. New Development Area: Special Building Setback. Notwithstanding any contrary provision of Section 42F-7, the building setback from the seaward edge of the Pier along the northeastern side of Parcel 5 shall be not less than sixty-five (65) feet and shall average seventy-five (75) feet. Structures and facilities within said special setback area shall provide for and be compatible with docking along the majority of said edge by large Vessels, including naval and oceanographic research Vessels.
4. Historic Monument Area: Prohibition on Creation of Passageways through Building 58 (the Ropewalk). Any Proposed Project to create passageways through Building 58 (the Ropewalk) is hereby prohibited.

5. Historic Monument Area and National Historical Park (Special Study Areas 1 and 2). In the Historic Monument Area and the National Historical Park (Special Study Areas 1 and 2, respectively, as shown on "Map 2C Harborpark District: Charlestown Waterfront," the zoning regulations in effect immediately prior to the effective date of this Article will continue to govern any Proposed Project in said Special Study Areas. Within Special Study Areas 1 and 2, all Proposed Projects must fully comply with all applicable provisions of Section 106 of the National Historic Preservation Act and must also comply with all relevant transfer documents relating to said Special Study Areas. No Proposed Project can proceed in Special Study Area 1 (Historic Monument Area) except in compliance with the Program of Preservation and Utilization, as amended, referenced in the deed dated July 7, 1978, from the General Services Administration to the Boston Redevelopment Authority conveying the Historic Monument Parcel of the Charlestown Navy Yard. In addition, in Special Study Area 2 (National Historic Park) all determinations regarding use and control of property will continue under the complete jurisdiction of the National Park Service. No change in the Charlestown Navy Yard Master Plan or the Zoning Code, as they govern the Historic Monument Area and the National Historical Park, shall be made until completion of required reviews under said Section 106, as applicable to said Master Plan and the Code; and any such change must be in compliance with all applicable provisions of said Section 106 and must also comply with all relevant transfer documents relating to said Special Study Areas.

‡SECTION 42F-14. **Use Regulations Applicable in the Charlestown Navy Yard.** No land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, within the Charlestown Navy Yard except in conformity with the provisions of this Section and Section 8-6.

1. Inclusion of Daycare Facilities. The provisions of this Subsection 1 apply only to Proposed Projects in the Charlestown Navy Yard that exceed a Building Height of fifty-five (55) feet. Any such Proposed Project having a gross floor area, not including the floor area devoted to Residential Uses, Hotel Uses, Water Dependent Facilities of Public Accommodation, or Cultural Uses, which equals or exceeds one hundred thousand (100,000) square feet shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table D of this Article; provided that any such Proposed Project with a Building Height of less than seventy-five (75) feet shall not be required to devote to day care facilities an amount of floor area exceeding (a) one-half percent (0.5%) times (b) the excess of (i) the gross floor area of said Proposed Project, not including the floor area devoted to Residential Uses, Hotel Uses, Water Dependent Facilities of Public Accommodation, or Cultural Uses, over (ii) one hundred thousand

(100,000) square feet. An Applicant for a Proposed Project subject to the provisions of this Subsection 1 may fulfill its obligations under this paragraph by either (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created, in the vicinity of the Proposed Project within the Charlestown Navy Yard, the Charlestown Waterfront, or the Charlestown neighborhood; provided that any Proposed Project subject to the provisions of this Section, other than a Proposed Project with a Building Height of seventy-five (75) feet or less, shall devote to day care facilities located on site an amount of floor area equal to at least four thousand (4,000) square feet or the minimum required square footage, whichever is less. For the purposes of this Section 42F-14.1, "on-site" shall mean within the Charlestown Navy Yard. The provision of day care facilities in accordance with this Subsection 1 shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours. Such day care facilities provided as part of a Proposed Project shall not be included in the calculation of gross floor area for the purposes of Subsection 42F-13.1 for the Proposed Project. The Board of Appeal may grant an exception to the provisions of this paragraph, in accordance with the provisions of Article 6A, if it finds that day care facilities existing in the Charlestown Navy Yard at the time of its determination are adequate to serve the anticipated demand for day care facilities generated by the occupancy of the Proposed Project.

TABLE D

Provision of Day Care Facilities

<u>Size of Proposed Project*</u> <u>(Gross Floor Area)</u>	<u>Minimum Day Care Facilities</u> <u>(Gross Floor Area)</u>
100,000 up to 200,000 sq.ft.	2% of gross floor area
200,000 up to 500,000 sq.ft.	4,000 sq.ft.
More than 500,000 sq.ft.	8,000 sq.ft.

* Excluding floor area devoted to Residential, Hotel, Cultural Uses, or Water Dependent Facilities of Public Accommodation.

2. Charlestown Navy Yard Housing Priority Area. Notwithstanding any other provision of this Section 42F-14 to the contrary, within that area depicted on "Map 2C"; as Housing Priority Area within the Charlestown Navy Yard,

for any Proposed Project a minimum of two (2) square feet of gross floor area shall be devoted to allowed Residential Uses for each square foot of gross floor area not devoted to such Residential Uses. An Applicant for any Proposed Project subject to the provisions of this Subsection 42F-14.2 may construct or rehabilitate space for allowed Residential Uses within the Charlestown Navy Yard Housing Priority Area, and aggregate the space for allowed Residential Uses and the space for other uses from different Proposed Projects of the Applicant's within the Charlestown Navy Yard Housing Priority Area to meet the ratio provided in this paragraph so long as the different Proposed Projects are completed within any consecutive period of twenty-four months.

3. Special Use Restrictions on Parcels 4, 5, 6, and 7, and Piers 5, 6, 7, 8, and 9. Notwithstanding any contrary provision of Subsection 4 of this Section 42F-14, within each portion of the New Development Area identified in Table E of this Article, allowed uses are limited to (a) those uses specified in Table E (and further described in Subsection 4 of this Section 42F-14) for such portion, and (b) Accessory and Ancillary Uses (as further described in said Subsection 4), except that:
 - (x) Open Space Recreational Uses, Parking Uses, Local Retail/Service Uses, General Retail Uses, Restaurant Uses, and Community Uses and Cultural Facilities, as those uses are further described in Subsection 4 of this Section 42F-14, are also allowed uses. On Parcel 6, facing Parcel 5 and the Historic Monument Area, the first floor of the building closest to Parcel 5 and to the Historic Monument Area to a depth of thirty (30) feet from such closest exterior building wall shall only be used for Local/Service Uses, General Retail Uses, Restaurant Uses, Community Uses, and Cultural Facilities, exclusive of lobby, mechanical, and circulation areas. For Piers 5, 6, 7, 8, and 9, all uses described in Subsections 4 and 5 of this Section 42F-14, but not identified as allowed uses in this Subsection 3 and Table E, shall be conditional uses for such Piers, subject to the provisions of Article 6. For the purposes of this Subsection 3 and Table E, "Marina Amenity Uses" means Open Space Recreational Uses, water-related uses, Water-Dependent recreational facilities, recreational marinas, Boat Rental Establishments, yacht clubs, navigation aids, marine police and fire stations, other marine, public safety and law enforcement facilities, Local Retail/Service Uses, General Retail Uses, Restaurant Uses, and Community Uses and Cultural Facilities, as those uses are further described in Subsection 4 of this Section 42F-14; and
 - (y) No more than 500,000 gross square feet of the total 1,100,000 gross square feet allowed on Parcels 6 and 7 (excluding Marine Amenity

Uses as described in Subsection 42F-14.3(x)) shall be designed and constructed for Office Uses and uses accessory thereto. Any space designed and constructed for Office Uses additional to such 500,000 gross square feet shall be conditionally permitted only, subject to the provisions of Article 6. Except for such conditionally permitted uses, the remaining 600,000 gross square feet of the total 1,100,000 gross square feet allowed on Parcels 6 and 7 (excluding Marina Amenity Uses), to the extent developed, shall be designed and constructed for Research Center Uses and uses accessory thereto. The Building Commissioner shall not issue any building permit with respect to any new building on Parcels 6 and 7 unless the Director of the Boston Redevelopment Authority has certified on the application therefor and on each and every plan filed with the Building Commissioner in connection therewith that the same is consistent with the provisions of this paragraph regarding the design and construction of buildings on such Parcels. Each Proposed Project in the New Development Area for more than fifty thousand (50,000) gross square feet shall comply with the transportation access planning requirements of Large Project Review; provided that any one or more of such Proposed Projects may coordinate the submission of any required transportation access plan. Any Proposed Project for a use which is not allowed in the New Development Area as set forth in Table E or is allowed in this subsection or Section 42F-14.4, and which is permitted conditionally in Section 42F-14.5, shall require a conditional use permit, as set forth in Section 42F-14.5 and Article 6, or an amendment to this Article. Prior to its recommendation of approval of any such amendment, the Boston Redevelopment Authority shall transmit copies of the proposed amendment to the Charlestown Neighborhood Council and the Harborpark Advisory Council, or any successor neighborhood organization, and to appropriate public agencies. The Boston Redevelopment Authority shall review comments and recommendations from the general public, neighborhood and community organizations, and public agencies before it renders a recommendation on a proposed amendment to this Article.

TABLE E

**Special Use Restrictions Applicable in the
New Development Area**

<u>Location</u>	<u>Primary Allowed Uses</u>
(a) Pier 5	Residential Uses, Marina Amenity Uses
(b) Pier 6	Marina Amenity Uses
(c) Pier 7	Residential Uses, Marina Amenity Uses
(d) Pier 8	Marina Amenity Uses
(e) Pier 9	Marina Amenity Uses
(f) Parcel 4	Hotel Uses*, Marina Amenity Uses, Restaurant Uses
(g) Parcel 5	Aquarium Use*, Marina Amenity Uses
(h) Parcels 6 and 7	Research Center Uses, Office Uses
(i) Housing Priority Area (Buildings 40, 42, 103, 104, 197)	Residential Uses

* If an aquarium is not constructed on Parcel 5, in accordance with the agreements governing Parcels 4, 5, 6, and 7 entered into with the Boston Redevelopment Authority establishing use and dimensional controls as specified in the Charlestown Urban Renewal Plan, as amended from time to time, then the uses described in Subsection 4 of this Section are allowed on Parcels 4 and 5. The affordability standard set forth in Sections 42F-5.3 and 42F-5.4 will continue to apply.

4. Allowed Uses. Within the Charlestown Navy Yard except as otherwise provided in this Section 42F-14, no land (including Tidelands and

submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except in accordance with the provisions of this Subsection 4 and Subsection 5 of this Section 42F-14. Any use specified in this Subsection 4 is allowed as a matter of right, subject only to the requirements set forth in the description of such use below:

(a) Water-Dependent and Water-Related Uses

(i) Water-Dependent Uses

Dock, slip, pier, wharf, anchorage, or moorage for Commercial Vessels and Recreational Vessels awaiting servicing, provisions, on or off loading of people or cargo at delivery;
Water-dependent recreational facility, Recreational Marina, facilities for the use, hire or charter of Commercial vessels, Boat Rental Establishment, recreational sailing or boating school, yacht club;
Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;
Aquarium, including uses appurtenant thereto such as gift shop, laboratory space, classrooms, restaurant, and floor service uses, office space, conference facilities, meeting rooms;
Other cultural, educational, research, or training facilities dedicated primarily to marine purposes;
Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;
Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;
Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, wave deflectors, and the like.

(ii) Water-Related Uses

Installation, repair, or servicing of boating accessories, marine equipment, marine instruments, or marine motors;
Chandlery, woodworking shop, electrical shop, or similar use for the repair and maintenance of Vessels;
Sale of marine hardware, or boating or diving supplies and equipment.

(b) Open Space Recreational Uses

Open space for active or passive recreational use or dedicated to the conservation of natural resources, including but not limited to the waterways areas, beaches, reservations, parks, and playgrounds; nonprofit sailing center or other public recreational facility operated by a nonprofit organization.

(c) Community Uses and Cultural Facilities

Library, museum, gallery, concert hall, legitimate theater, auditorium, performance space, aquarium, or historical exhibit open to public generally;

Community center or community service facility;

Day care center.

(d) Residential Uses

Building or group of buildings for occupancy by three (3) or more families in separate dwelling units;

Group residence, limited, as defined in clause (22B) of Section 2-1;

Convalescent, nursing, or rest home;

Lodging or boarding house.

(e) Hotel Uses

Hotel, conference and meeting facilities, restaurant, lounge, bar, store primarily serving the retail needs of hotel, conference, and meeting guests, health club, swimming pool, parking garage, storage and office use accessory to hotel use.

(f) Office Uses

Office of professional persons, not accessory to a main use;

Real estate, insurance, financial service institution, or other agency or government office;

Office or display or sales space of a wholesale, jobbing, or distributing house, provided that the office or display or sales space of the wholesale, jobbing, or distributing house is associated with a Water-Dependent Use;

Office building, post office, bank (other than drive-in bank), or similar establishments.

(g) Research Center Uses

Laboratories and facilities for teaching and for theoretical, basic, and applied research, product development and testing, prototype fabrication, or production of experimental products; the keeping of marine life or laboratory animals incidental to a research or development use; storage and office use accessory to a research or development Use; parking garage, day care center.

Design, development, manufacture, compounding, packaging, processing, fabrication, altering, assembly, repair, servicing, renting, testing, handling, or transfer of products as would be included in Research and Development Uses, consistent with the provisions of Subsection 36-4.1; parking garage, day care center, storage and office use, accessory to a Research Center Use.

(h) Local Retail/Service Uses

Store primarily serving the local retail business or service needs of the neighborhood and harbor/waterfront users, including but not limited to chandlery, barber shop, beauty shop, shoe repair shop, self-service laundry, pick-up and delivery station of laundry or drycleaner, tailor shop, hand laundry;

Store retailing one or more of the following but not limited to: food, baked goods, groceries, drugs, tobacco products, clothing, drygoods, books, film, video, art, flowers, paint, hardware, and small household appliances.

(i) General Retail Uses

Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage, provided that any Proposed Project for a general retail use shall be conditional if it: (a) establishes an occupancy for a general retail use having a gross floor area of seventy-five thousand (75,000) or more square feet; or (b) changes to a general retail use the use of a gross area of seventy-five thousand (75,000) or more square feet; or (c) enlarges a general retail use so as to result in a total gross floor area of seventy-five thousand (75,000) or more square feet.

(j) Restaurant Uses

Lunchroom, restaurant, cafeteria, or other place for the service or sale of food or drink for on-premises consumption, including outdoor cafes;
Place for sale and consumption of food and beverages (other than drive-in restaurants) providing dancing or entertainment or both;
Pushcart food vendors;
In a structure, sale over the counter, not wholly incidental to a local retail business or restaurant use, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out (New Development Area only).

(k) Educational Uses

Marine research and/or training institute for educational institution provided that water access is required for the facility or its operation.

(l) Public Service Uses (subject to St. 1956, Chapter 665, Section 2)

Public service pumping station, public service substation, automatic telephone exchange, fire station, police station;
Flood, water level, or tidal control facility;
Cable conduit, pipeline crossing, stormwater outlet, or other similar utility structure.

(m) Transportation Uses

Public transportation facility, bus station, trolley station.

(n) Parking Uses

Parking garage or parking lot.

(o) Accessory and Ancillary Uses

Any of the following uses accessory or ancillary to an allowed use, subject to the limitations and restrictions of Article 10:

- (i) any use accessory or ancillary to, and ordinarily incident to, a lawful main use; provided that such use is not specifically forbidden in the district; and provided further that any such use shall be subject to the same restrictions, conditions, limitations, provisos and safeguards as the use to which it is accessory.

- (ii) an office, within a main building, of an accountant, architect, attorney, dentist, physician, or other professional person who resides in such building.
- (iii) an occupation for profit customarily carried on in a dwelling unit by a person residing therein provided that such occupation is carried on in a main building and requires only equipment ordinarily incident to a dwelling unit and that no nonresident help is employed and that there is no trading in merchandise.
- (iv) the keeping of laboratory animals incidental to a lawful educational, research center, aquarium, or institutional use.
- (v) as accessory uses to hotel uses, restaurants, conference facilities, retail and service establishments serving guests and visitors and other uses incidental to the operation of a hotel.
- (vi) as accessory uses to research center uses, restaurant, office, and other uses incidental to the operation of such research center uses.
- (vii) the storage of flammable liquids and gases incidental to a lawful use.
- (viii) permanent dwellings for personnel required to be resident on a Lot for the safe and proper operation of a lawful main use.
- (ix) day care center.
- (x) health club facility, tennis court, swimming pool.

5. Conditional Uses. Within the Charlestown Navy Yard except as otherwise provided in this Section 42F-14, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use under the provisions of Article 6, unless such use is specified in this Subsection 5.

(a) Open Space Recreational Uses

Recreational building (other than a nonprofit sailing center or other public recreational facility operated by a nonprofit organization) on an Open Space area that is necessary and/or appropriate to the enhanced enjoyment of the particular Open Space area and is open to the public.

- (b) Take-out Restaurant (within the Historic Monument Area and National Historical Park)

In a structure, sale over the counter, not wholly incidental to a local retail business or restaurant use, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.

6. Forbidden Uses. Any use not specified as an allowed or conditional use in this Section 42F-14, except for such nonconforming uses as may be allowed to continue under the provisions of Article 9, shall be forbidden uses in the Charlestown Navy Yard. Without limitation, uses described in Use Items No. 34A and No. 38A of Table A of Section 8-7 shall be forbidden uses in the said Subdistrict. In addition, and notwithstanding any contrary provision hereof, any use of a floating structure, other than for a Water-Dependent Use, is forbidden in the said Subdistrict.

(↑ As amended on February 22, 1991, September 30, 1993, October 6 and December 19, 1994, May 9 and November 21, 1996, and July 31, 1997.)

SECTION 42F-15. **Shipyard Park Open Space Subdistrict.** This section establishes the Shipyard Park Open Space Subdistrict within the Charlestown Navy Yard shown on Map 2C of this Code. Any Lot within an open space subdistrict is subject to Article 33, Open Space Subdistricts, and other provisions of this Code applicable to such subdistrict.

MISCELLANEOUS PROVISIONS

SECTION 42F-16. **Regulations.** The Boston Redevelopment Authority may promulgate regulations to administer this Article.

SECTION 42F-17. **Rights to Navigation.** No provision of this Code shall be construed as a limitation upon the navigational rights of vessels or upon the regulation thereof by the United States.

SECTION 42F-18. **Severability.** The provisions and requirements of this Article are severable, and if any such requirements or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision or requirement of this Article.

SECTION 42F-19. **Definitions.** Words and phrases defined in Appendix A to this Article, when capitalized in this Article, have the meanings set forth in said Appendix A.

SECTION 42F-20. **Appendices.** The following appendices are hereby made part of this Article:

1. Appendix A - Definitions
2. Appendix B - Water-Dependent Uses and Facilities of Public Accommodation

APPENDIX A to ARTICLE 42F

Definitions

For the purposes of Articles 42F only, the following words and phrases, when capitalized, shall have the meanings indicated. Words and phrases not herein defined shall have the meanings indicated in Article 2.

1. "Adjusted Income" is defined as it is in 24 CFR 813.102, as amended, or as set forth in regulations adopted in accordance with Subsections 42F-5.
2. "Affordable" means, in the case of an owner-occupied dwelling unit, requiring the expenditure by a Low-Income, Moderate-Income, or Upper Moderate-Income Household for mortgage and insurance payments, real estate taxes, and condominium fees of not more than thirty percent (30%) of its Adjusted Income to occupy the unit, and, in the case of a renter-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household or Upper-Moderate Income Household for rent payments of not more than thirty percent (30%) of its Adjusted Income to occupy the unit.
3. "Annual Income" is defined as it is in 24 CFR 813.106, as amended, or as set forth in regulations adopted in accordance with Subsections 42F-5.
4. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 42F-4 or the authorized agent of any such person or entity.
5. "Boat Rental Establishment" means any use or establishment that involves the renting, hiring, or instruction in the use of any sailboat, rowboat, or other Recreational Vessel that does not require an operator's license by the United States Coast Guard or the conferring of seasonal use privileges in a fleet of such Recreational Vessels.
6. "Building Height," notwithstanding the provisions of clause (23) of Section 2-1, means (a) for a flat roof, the vertical distance from the grade to the top of the highest point of the roof beams excluding mechanical roof structures and penthouses normally built above the roof and not used or designed to be used for human occupancy, and (b) for a pitched roof, the vertical distance from grade to the lower (i) of the mean level of the highest gable or of the slope of a hip roof or (ii) of the top of the structure of the highest occupied floor. A mansard roof shall be considered a flat roof. For Piers, grade shall be measured from the top of the deck of the Pier. In the Charlestown Navy Yard, mechanical roof structures, penthouses, masts, spires, roof structures, and other structures

APPENDIX A to ARTICLE 42F (continued)

normally built above the roof and not used or designed for human occupancy shall be excluded in calculating Building Heights.

7. "Bulkhead" means a vertical structure used to create an edge between the land and the water against which Vessels can be placed to unload or engage in other activities.
8. "Chapter 91" means M.G.L. Chapter 91 and implementing regulations, codified as of the effective date of this article at 310 C.M.R. 9.00, as said statute and regulations may, from time to time, be amended.

↑8.1 "Charlestown Waterfront" is as defined in clause 10 of Appendix A to Article 42A.

(↑ As inserted on January 28, 1991.)

9. "Commonwealth Tidelands" has the meaning ascribed in Chapter 91.
10. "End" of a Pier means the edge of the Pier that is most nearly opposite the edge connecting the Pier with dry land and most nearly parallel to the 1880 Harbor Line or, if the 1880 Harbor Line is not applicable, the general direction of the shoreline.
11. "Existing Pier" means a Pier existing as of the date of the first notice of hearing for the adoption of this Article before the Zoning Commission.
12. "Facility of Public Accommodation" means a use so described in Appendix B.
13. "FAR" means floor area ratio, as defined in Section 2-1, subject to the provisions of Section 15-1 regarding calculation of the area of the Lot.
14. "Filled Tidelands" means former submerged lands and tidal flats which are no longer subject to tidal action due to the presence of fill, including drydocks used for Water Dependent Uses.
15. "Flowed Tidelands" means present submerged lands and tidal flats which are subject to tidal action at the time of license application under Chapter 91, excluding drydocks used for Water Dependent Uses.
16. "Harborpark District" means the Charlestown Waterfront, the Charlestown Navy Yard, Fort Point Waterfront, the North End/Downtown Waterfront, and the Dorchester Bay/Neponset River Waterfront.

APPENDIX A to ARTICLE 42F (continued)

17. "Harborpark District Plan" means the plan of the same name adopted or to be adopted by the Boston Redevelopment Authority.
18. "High/Low Tide Line" means the present arithmetic mean of the water heights observed at high tide and at low tide over a specific 19-year Metonic Cycle (the National Tidal Datum Epoch and at low tide) and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.
19. "Index" means Consumer Price Index for all Urban Consumers, Boston, MA, all items - Series A (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor or, in the event such Consumer Price Index ceases to be published by the United States Department of Labor, a similar published index measuring consumer price levels in the Boston Metropolitan Area, as designated by the Boston Redevelopment Authority.
20. "Lot", notwithstanding the provisions of clause (26) of Section 2-1, means a parcel of land, including land under water (a) whether or not platted, and (b) in common control and combined for a single Proposed Project or in single ownership.
21. "Lot Area", notwithstanding the provisions of clause (27) of Section 2-1, means the horizontal area of the Lot exclusive (a) of any area in a street, (b) of any area in a private way devoted to public use by motor vehicles, (c) of any fresh water area more than ten (10) feet from the shoreline, and (d) of any salt water area below the High Tide Line. The foregoing notwithstanding, (x) the horizontal area of any Pier located in the Lot and (y) a private way open to vehicles for the purpose of accessing the Lot only and a street or private way open only to pedestrians and emergency vehicles shall be included in the Lot Area. Further, if a Proposed Project shall result in a net reduction in the horizontal area of Piers on the Lot, then Lot Area shall be computed on the basis of the horizontal area of said Piers as of the commencement of the Proposed Project.
22. "Low-Income Household" means any household whose Annual Income does not exceed 50% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
23. "Main Shipping Channel" means the shipping channel for deep draft vessels in the Boston Inner Harbor as depicted by dashed lines on that certain chart issued by National Oceanic and Atmospheric Administration as chart number 13272 and entitled "Boston Inner Harbor," 39th Edition, dated November 24, 1984.

APPENDIX A to ARTICLE 42F (continued)

24. "Marina Amenity Uses" means those uses identified as such in Subsection 42F-14.3(x).
25. "Maritime Economy Reserve Subdistrict" means a subdistrict subject to the provisions of this Code applicable within an MER district.
26. "Median Gross Income" is defined as it is by the United States Department of Housing and Urban Development, pursuant to 24 CFR Section 813.102, as amended, or as set forth in regulations adopted in accordance with Subsection 42F-5.
27. "Moderate-Income Household" means any household whose Annual Income does not exceed 80% of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
28. "Natural High/Low Tide Line" means the historic high/low tide line that would be observed except for alteration of the shoreline by filling, dredging, or impounding.
29. "Open Space" has the meaning set forth in Section 42F-6.
30. "Pedestrian Access Network" means a pedestrian network of a kind and to a degree that is appropriate for the site and consisting of, at a minimum:
 - (i) walkways and related facilities along the entire length of the shoreline, and along the edges of any Piers or filled areas, which walkways shall be no less than twelve (12) feet in width; and
 - (ii) appropriate connecting walkways that allow pedestrians access to shoreline and Pier walkways from public ways or other Public Access Facilities to which any Commonwealth Tidelands or Private Tidelands on the site are adjacent.
31. "Pier" means any structure that extends seaward of the High Tide Line, but excluding any floating structure.
32. "Private Tidelands" has the meaning ascribed in Chapter 91.
33. "Proposed Project" means the substantial demolition, erection, or extension of any structure or part thereof, or the change or extension of use of any structure or land (including submerged land and Tidelands), for which the Applicant is required to obtain a building or use permit. A Proposed Project may be built in phases and may include separate or connected building elements on the same Lot.

APPENDIX A to ARTICLE 42F (continued)

34. "Public Access Facility" means a facility for pedestrian access to and/or along the waterfront, as provided in clauses (a) and (b) of Subsection 42F-5.
35. "Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the Commonwealth of Massachusetts, or one or more political subdivisions of the Commonwealth, or of the United States. For the purposes of this article, the Commonwealth's proprietary interest in Tidelands shall not constitute "ownership" by a Public Agency.
36. "Public Boat Ramp" means any ramp structure that provides public access to or egress from the water for Vessels.
37. "Recreational Marina" means any arrangement of docks, slips, Piers, pilings, moorings, or other facilities in or adjacent to the water, for use primarily by Recreational Vessels, including, but not limited to, any such facility associated with a yacht club or boat club.
38. "Seasonal Dry Storage" means the storage of Recreational Vessels on land for periodic use in the water during the active boating season, generally from April through October.
39. "Sides" of a Pier means the edges of the Pier other than the edge connecting the Pier with dry land and other than the End of the Pier.
40. "Tidelands" means present and former submerged lands and tidal flats lying between the Natural High Tide Line and the seaward limit of state jurisdiction.
41. "Underlying Zoning" means all zoning regulations, with the exception of this article, which are contained in this code.
42. "Upper-Moderate Income Household" means any household whose Annual Income does not exceed 110% of the Median Gross Income of Households in the Boston Standard Metropolitan Statistical Area.
43. "Vessel" means any watercraft, including, but not limited to, a Commercial Vessel or Recreational Vessel, but not including any floating structure permanently moored or attached to land or a Pier.
44. "Vessel, Commercial" means any Vessel used for the principal purpose of engaging in a water-related commercial activity, including, but not limited to, charter boat, fishing boat, tug boat, cruise boat, freighter, or barge.

APPENDIX A to ARTICLE 42F (continued)

45. "Vessel, Recreational" means any Vessel used principally for recreational purposes.
46. "Water-Dependent Commercial Use" means a use described in Subsection 42D-3.1.
47. "Water-Dependent Use" means those uses described as such in Appendix B to this Article 42F and in Section 42F-14.4(a)(i).
48. "Water-Dependent Facility of Public Accommodation" means a Facility of Public Accommodation that is also a Water-Dependent Use.
49. "Waterfront Yard Area" has the meaning ascribed in Section 42F-7.
50. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.
51. "1880 Harbor Line" means that line established by Chapter 170 of the Massachusetts Acts of 1880 as the then applicable seaward limit of Pier and wharf construction.
52. "Pierhead Line" means the seaward limit of Pier construction as established in applicable law of the Commonwealth of Massachusetts.

APPENDIX B to ARTICLE 42F

Water-Dependent Uses and Facilities of Public Accommodation

Water-Dependent Uses

Water-Dependent industrial uses;
Facilities for fishing, swimming, diving, and other water-based recreational activities;
Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;
Aquariums and other cultural, educational, research, or training facilities dedicated primarily to marine purposes;
Aquaculture facilities;
Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;
Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, water deflectors, and the like;
Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;
Marinas, boat basins, Boat Rental Establishments, boating or sailing school, channels, storage areas, and other facilities and establishments for commercial or recreational boating.

Facilities of Public Accommodation

A "Facility of Public Accommodation" means a facility, including a commercial facility, at which goods or services are made available directly to the general public. Facilities of Public Accommodation include, but are not limited to:

Lunch room, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, provided that there is no dancing nor entertainment other than phonograph, radio, and television;
Place for sale and consumption of food and beverages (other than drive-in restaurant) providing dancing or entertainment or both, provided that such establishment is customarily open to the public at large and does not exclude any minor by reason of age as a prevailing practice;
Theater;
Lobbies and public areas of a hotel or motel;
Library, museum, aquarium, educational, historical, or cultural institution open to the public;

APPENDIX B to ARTICLE 42F

- Adult education center, community center, or other interior space dedicated to the programming of community meetings, informational displays, special recreational events, or other public activities;
- Store primarily serving the local retail business needs of the residents of the neighborhood, including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, drugs, tobacco products, clothing, dry goods, books, flowers, paint, hardware, and minor household appliances, but not including packaged alcoholic beverages;
- Department store, furniture store, general merchandise mart, or other store serving general retail business needs of a major part of the city, including accessory storage;
- Barber shop, beauty shop, shoe repair shop, self-service laundry, pick-up and delivery station of laundry or dry-cleaner, or similar use;
- Tailor shop or hand laundry;
- Caterer's establishment, photographer's studio, upholsterer's shop, carpenter's shop, or electrician's shop;
- Day care facility; and
- Sports or physical fitness facility open to the public;
- Interior facility for waterborne public transportation facilities, recreational marina, boat rental establishment, recreational sailing or boating school, or other recreational boating facility or establishment.

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